

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/1. THE NATURE OF CORPORATIONS/(1) DEFINITIONS AND CHARACTERISTICS/(i) Classification/1101. Corporations and unincorporated associations.

CORPORATIONS (

1. THE NATURE OF CORPORATIONS

(1) DEFINITIONS AND CHARACTERISTICS

(i) Classification

1101. Corporations and unincorporated associations.

A corporation may be defined as a body of persons (in the case of a corporation aggregate) or an office (in the case of a corporation sole)¹ which is recognised by the law as having a personality which is distinct from the separate personalities of the members of the body or the personality of the individual holder for the time being of the office in question. There are many associations and bodies of persons which are not corporations. Some of these, such as registered friendly societies², may be regarded as quasi corporations, as they have some of the usual attributes of corporations, such as the possession of a name in which they may sue or be sued, and the power (independently of any contract between the members) to hold property for the purposes defined by their objects and constitutions³. Partnerships are not usually regarded as quasi corporations, although, if carrying on business in England or Wales, they may sue and be sued in the name of the firm⁴. Subject to the exceptions mentioned above, unincorporated associations may not sue or be sued in their own name⁵ nor (unless their purposes are charitable) may property be held for their purposes otherwise than by virtue of a contract between the members for the time being⁶.

1 For classes of corporations see PARA 1103 post. For the meaning of 'corporation aggregate' see PARA 1109 post. For the meaning of 'corporation sole' see PARA 1111 post.

2 Since 1 February 1993 new friendly societies must be registered as incorporated societies under the Friendly Societies Act 1992 Pt II (ss 5-26) (as amended) and cannot be registered as unincorporated societies under the Friendly Societies Act 1974: see s 7(1) (as amended); the Friendly Societies Act 1992 s 93(1); and FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARAS 2083, 2111, 2149. Registered friendly societies in existence on that date may continue as unincorporated bodies: see the Friendly Societies Act 1974 s 7(1) (as amended); the Friendly Societies Act 1992 s 93(2); and FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 2096. See also *Longdon-Griffiths v Smith* [1951] 1 KB 295, [1950] 2 All ER 662 (action for libel against registered friendly society should be brought against society in registered name).

3 As to quasi corporations see PARA 1102 post. As to certain types of unincorporated companies which are now obsolete see COMPANIES vol 14 (2009) PARA 3.

4 See CPR Sch 1 RSC Ord 81 r 1; CPR Sch 2 CCR Ord 5 r 9; and PARTNERSHIP vol 79 (2008) PARA 79 et seq. As to the status of a foreign partnership see *Von Hellfeld v Rechnitzer and Mayer Frères & Co* [1914] 1 Ch 748, CA (cited in para 1107 note 7 post).

5 *Lloyd v Loaring* (1802) 6 Ves 773; *Beaumont v Meredith* (1814) 3 Ves & B 180; *London Association for Protection of Trade v Greenlands Ltd* [1916] 2 AC 15, HL.

6 See *Re Clarke, Clarke v Clarke* [1901] 2 Ch 110; *Re Ray's Will Trusts, Public Trustee v Barry* [1936] Ch 520, [1936] 2 All ER 93; *Re Taylor, Midland Bank Executor and Trustee Co Ltd v Smith* [1940] Ch 481, [1940] 2 All ER

637, CA; *Leahy v A-G for New South Wales* [1959] AC 457, [1959] 2 All ER 300, PC; *Neville Estates Ltd v Madden* [1962] Ch 832, [1961] 3 All ER 769; *Re Recher's Will Trusts*, *National Westminster Bank Ltd v National Anti-Vivisection Society Ltd* [1972] Ch 526, [1971] 3 All ER 401; *Re Lipinski's Will Trusts*, *Gosschalk v Levy* [1976] Ch 235, [1977] 1 All ER 33; *Re Grant's Will Trusts* [1979] 3 All ER 359, [1980] 1 WLR 360.

For other forms of unincorporated association see eg CLUBS vol 13 (2009) PARA 204 et seq; CONTRACT vol 9(1) (Reissue) PARA 765; NATIONAL CULTURAL HERITAGE vol 77 (2010) PARAS 936, 939.

UPDATE

1101 Corporations and unincorporated associations

NOTE 4--CPR Sch 1 RSC Ord 81 r 1, CPR Sch 2 CCR Ord 5 r 9 omitted: SI 2006/1689.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/1. THE NATURE OF CORPORATIONS/(1) DEFINITIONS AND CHARACTERISTICS/(i) Classification/1102. Quasi corporations.

1102. Quasi corporations.

Quasi corporations possess a name in which they may sue or be sued, and have the power (independently of any contract between the members) to hold property for the purposes defined by their objects and constitutions. The most important category of quasi corporations is trade unions.

Under Part I of the Trade Union and Labour Relations (Consolidation) Act 1992¹ a trade union is not a body corporate but it is capable of making contracts and suing and being sued in its own name, and criminal proceedings may be brought against it in its own name². A trade union is also liable in tort for certain acts authorised or indorsed by it³. A trade union is not treated as if it were a body corporate except to the extent authorised by Part I⁴.

An employers' association may be either incorporated or unincorporated and, if unincorporated, has capacities similar to those of a trade union⁵.

Other organisations which have been held to have quasi-corporate status include trustee savings banks⁶, the former volunteer corps⁷ and the War Damage Commission⁸. The Inns of Court, having power to hold land for their purposes, may be regarded as having quasi-corporate status⁹. Examples of quasi corporations sole are the Lord Chancellor and the Lord Chief Justice¹⁰ and the Chamberlain of London¹¹.

1 See the Trade Union and Labour Relations (Consolidation) Act 1992 Pt I (ss 1-121) (as amended): see EMPLOYMENT vol 40 (2009) PARA 846 et seq.

2 See *ibid* s 10(1); and EMPLOYMENT vol 40 (2009) PARA 852. The quasi-corporate status of trade unions before 1971 was established by decisions of the courts: see *Taff Vale Rly Co v Amalgamated Society of Rly Servants* [1901] AC 426, HL; *Amalgamated Society of Rly Servants v Osborne* [1910] AC 87, HL; *Cotter v National Union of Seamen* [1929] 2 Ch 58, CA; *National Union of Municipal and General Workers v Gillian* [1946] KB 81, [1945] 2 All ER 593, CA; *Bonsor v Musicians' Union* [1956] AC 104, [1955] 3 All ER 518, HL. Under the Industrial Relations Act 1971 registered trade unions became bodies corporate: see s 74(1) (repealed).

3 See the Trade Union and Labour Relations (Consolidation) Act 1992 s 20; and EMPLOYMENT vol 41 (2009) PARA 1352.

4 See *ibid* s 10(2); and EMPLOYMENT vol 40 (2009) PARA 852. In *Electrical, Electronic, Telecommunications and Plumbing Union v Times Newspapers Ltd* [1980] QB 585, [1980] 1 All ER 1097, it was held that a trade union could not sue in its own name for defamation as it did not possess the necessary personality which it could protect by an action in defamation; but cf *National Union of Municipal and General Workers v Gillian* [1946] KB

81, [1945] 2 All ER 593, CA, and *Derbyshire County Council v Times Newspapers Ltd* [1993] AC 534, [1993] 1 All ER 1011, HL (where it was assumed that a trade union may sue for defamation).

5 See the Trade Union and Labour Relations (Consolidation) Act 1992 s 127 (as amended); and EMPLOYMENT vol 40 (2009) PARA 1029. In the absence from s 127 (as amended) of any provision equivalent to s 10(2) (see the text and note 4 supra), it has been suggested that an employers' association may have a wider personality than a trade union and may bring proceedings for defamation: *Electrical, Electronic, Telecommunications and Plumbing Union v Times Newspapers Ltd* [1980] QB 585 at 600, [1980] 1 All ER 1097 at 1104 obiter per O'Connor J.

6 *Knight and Searle v Dove* [1964] 2 QB 631, [1964] 2 All ER 307. Pursuant to the Trustee Savings Bank Act 1985, the assets and liabilities of the existing trustee savings banks were transferred to companies regulated by the Companies Act 1985 and the banks were dissolved: see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 809.

7 *Re Edis's Trusts, Campbell-Smith v Davies* [1972] 2 All ER 769, sub nom *Edis's Declaration of Trust* [1972] 1 WLR 1135.

8 *IRC v Bew Estates Ltd* [1956] Ch 407, [1956] 2 All ER 210. The War Damage Commission, constituted under the War Damage Act 1943 s 3 (repealed), was dissolved by the War Damage Act 1964 s 2(1) and its functions were, with certain exceptions, transferred to the Commissioners of Inland Revenue: see s 2(2)-(5). The functions of the Inland Revenue and of Her Majesty's Customs and Excise have been taken over by the Commissioners for Her Majesty's Revenue and Customs appointed under the Commissioners for Revenue and Customs Act 2005 s 1: see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 900 et seq; INCOME TAXATION. See also VALUE ADDED TAX vol 49(1) (2005 Reissue) PARA 13.

9 See LEGAL PROFESSIONS vol 66 (2009) PARA 1050. See also *Willis v Association of Universities of British Commonwealth* [1965] 1 QB 140 at 147, [1964] 2 All ER 39 at 42, CA, per Lord Denning MR.

10 Grant, Law of Corporations 661.

11 See *Byrd v Wilford* (1596) Cro Eliz 464, Ex Ch.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/1. THE NATURE OF CORPORATIONS/(1) DEFINITIONS AND CHARACTERISTICS/(i) Classification/1103. Classes of corporations.

1103. Classes of corporations.

Corporations may be divided into two main classes, namely corporations aggregate and corporations sole¹. A corporation within either of these classes may be an ecclesiastical corporation or a lay corporation². Ecclesiastical corporations comprise corporations sole such as a bishop³, and corporations aggregate such as the dean and chapter of a cathedral church⁴ and parochial church councils⁵.

1 *Sutton's Hospital Case* (1612) 10 Co Rep 1a, 23a at 29b, Ex Ch; 1 Roll Abr 512; and see Grant, Law of Corporations 1, 626. For the meaning of 'corporation aggregate' see PARA 1109 post.

2 As to ecclesiastical corporations see ECCLESIASTICAL LAW vol 14 para 1252 et seq. Corporations have been divided into spiritual and temporal: Cowell's Interpreter.

3 1 Roll Abr 512. For other examples see PARA 1112 post.

4 *Sutton's Hospital Case* (1612) 10 Co Rep 1a, 23a, Ex Ch.

5 See the Parochial Church Councils (Powers) Measure 1956 s 3; and ECCLESIASTICAL LAW vol 14 para 569.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/1. THE NATURE OF CORPORATIONS/(1) DEFINITIONS AND CHARACTERISTICS/(i) Classification/1104. Types of corporation.

1104. Types of corporation.

Lay corporations are sometimes classified as trading or non-trading corporations, but this distinction has little legal significance¹. In practice, lay corporations may be divided into a number of groups according to their nature and purpose, including ministers and other officers of the Crown²; local government authorities³; other public bodies exercising administrative or advisory functions, either nationally⁴ or within a limited area⁵; the corporations (sometimes described as national or public corporations) which control the public industries and services⁶; incorporated institutions for the advancement of the arts and sciences⁷; incorporated professional and trade associations⁸; corporations established for charitable purposes⁹; incorporated members' clubs¹⁰, and other incorporated associations formed for the non-financial benefit of their members; employers' associations¹¹; and, numerically much the largest group, corporations formed for the purpose of securing a profit for their members, either by trading or by the holding of investments or other property.

Corporations may also be classified according to their method of creation¹². To some extent this classification corresponds to classification by nature and purpose. Corporations formed for the profit of their members are incorporated under the Companies Act 1985 or one of the other statutes authorising the creation of corporate status by registration¹³. Although there are still a few privately owned trading corporations incorporated by royal charter¹⁴, and a number of such corporations incorporated by special Act of Parliament¹⁵, corporations formed for the profit of their members are no longer formed by these methods¹⁶. Corporations formed for public purposes are usually incorporated by public general Act of Parliament¹⁷. Incorporation by royal charter is now in practice limited to institutions such as universities and the principal scientific, cultural, professional or charitable organisations. Other organisations are incorporated under the Companies Act 1985 if they desire to have corporate status.

1 The only legal distinctions are: (1) that a trading corporation has an implied power to borrow money for the purposes of its business, but a non-trading corporation has no implied power to borrow money (see PARA 1238 post); and (2) that certain provisions of the Companies Act 1985 are or may be made applicable to trading corporations not incorporated by or registered under any public general Act of Parliament, but are not applicable to non-trading corporations not so incorporated or registered (see the Companies Act 1985 s 718, Sch 22 (as amended)).

2 See CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 362-363. In connection with any change in the departments of the office of Secretary of State, or any change in the functions of a Secretary of State, a Secretary of State may be made a corporation sole by Order in Council: see the Ministers of the Crown Act 1975 s 2(1)(a); and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 363. For the meaning of 'corporation sole' see PARA 1111 post. Certain ministers are corporations under s 6, Sch 1 para 5: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 362. For an example of the incorporation of a non-ministerial office see the Treasury Solicitor Act 1876 s 1, incorporating the Treasury Solicitor; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 541. As to the status of the Prime Minister see PARA 1112 note 4 post.

3 See the London Government Act 1963 s 1(2); the Local Government Act 1972 s 1, s 2 (as amended), s 8(1) (as amended), s 14, s 20 (as substituted), s 21 (as substituted and amended), s 33 (as substituted); and LOCAL GOVERNMENT vol 69 (2009) PARA 1; LONDON GOVERNMENT vol 29(2) (Reissue) PARA 35.

4 Eg the Pensions Regulator, incorporated by the Pensions Act 2004 s 1: see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 598 et seq.

5 Eg strategic health authorities, health authorities and special health authorities incorporated by the National Health Service Act 1977 s 12(2) (as amended), Sch 5 para 8 (as amended): see HEALTH SERVICES vol 54 (2008) PARA 94 et seq.

6 Eg the Channel Four Television Corporation, incorporated by the Broadcasting Act 1990 s 23, Sch 3 para 1 (as amended): see TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 365.

- 7 Eg the Royal Society of London, incorporated by Charles II in 1662: see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 936.
- 8 Eg the Law Society, incorporated by royal charter in 1845: see LEGAL PROFESSIONS vol 65 (2008) PARA 604.
- 9 See CHARITIES vol 8 (2010) PARA 224 et seq; EDUCATION vol 15(1) (2006 Reissue) PARA 509; EDUCATION vol 15(2) (2006 Reissue) PARAS 646, 651 et seq, 672 et seq.
- 10 See CLUBS vol 13 (2009) PARA 206 et seq.
- 11 See the Trade Unions and Labour Relations (Consolidation) Act 1992 s 127; para 1102 ante; and EMPLOYMENT vol 40 (2009) PARA 1029 et seq.
- 12 See PARA 1128 et seq post.
- 13 See PARA 1143 post.
- 14 See PARA 1142 post.
- 15 Trading corporations incorporated by special Act of Parliament were, however, often of a quasi-public nature. Most such corporations were dissolved in consequence of the nationalisation of their undertakings (eg by the Transport Act 1947 in the case of railway and canal companies) but some still exist.
- 16 A special Act of Parliament may, however, sometimes be obtained to confer special powers on an existing privately owned corporation: see eg the National Westminster Bank Act 1969.
- 17 See PARA 1143 post; and the examples in notes 2-6 supra. In a few cases corporations having public functions of a local nature may be incorporated by local Act of Parliament: see eg the Chichester Harbour Conservancy, incorporated by the Chichester Harbour Conservancy Act 1971.

UPDATE

1104 Types of corporation

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 1--Companies Act 1985 s 718, Sch 22 replaced by Companies Act 2006 s 1043: see COMPANIES vol 15 (2009) PARA 1666. Companies Act 1985 Sch 22 repealed: Companies Act 2006 Sch 16.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/1. THE NATURE OF CORPORATIONS/(1) DEFINITIONS AND CHARACTERISTICS/(i) Classification/1105. Open-ended investment companies.

1105. Open-ended investment companies.

An open-ended investment company is a body corporate which is a collective investment scheme and which satisfies certain statutory conditions¹. If the Financial Services Authority² makes an authorisation order then, immediately upon the coming into effect of the order, the body to which the authorisation order relates is to be incorporated as an open-ended investment company (notwithstanding that, at the point of its incorporation, the body will not have any shareholders or property)³.

1 An 'open-ended investment company' means a collective investment scheme which satisfies both the property condition and the investment condition: Financial Services and Markets Act 2000 s 236(1). The

property condition is that the property belongs beneficially to, and is managed by or on behalf of, a body corporate having as its purpose the investment of its funds with the aim of: (1) spreading investment risk; and (2) giving its members the benefit of the results of the management of those funds by or on behalf of that body: s 236(2). The investment condition is that, in relation to the body corporate, a reasonable investor would, if he were to participate in the scheme: (a) expect that he would be able to realise, within a period appearing to him to be reasonable, his investment in the scheme (represented, at any given time, by the value of shares in, or securities of, the body corporate held by him as a participant in the scheme); and (b) be satisfied that his investment would be realised on a basis calculated wholly or mainly by reference to the value of property in respect of which the scheme makes arrangements: s 236(3). As to collective investment schemes and open-ended investment companies see further Pt XVII (ss 235-284); and FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARAS 603 et seq, 621 et seq.

2 As to the Financial Services Authority see FINANCIAL SERVICES AND INSTITUTIONS vol 48 (2008) PARA 4 et seq.

3 Open-ended Investment Companies Regulations 2001, SI 2001/1228, reg 3.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/1. THE NATURE OF CORPORATIONS/(1) DEFINITIONS AND CHARACTERISTICS/(i) Classification/1106. European company and European Economic Interest Groupings.

1106. European company and European Economic Interest Groupings.

The EC Council Regulation on the Statute for a European Company¹ provides for the creation of a new form of public limited-liability company, the European Company (or Societas Europaea, known as the 'SE')². Such a company has legal personality³.

Another form of entity known as a European Economic Interest Grouping ('EEIG') was created in 1985⁴, with the intention of encouraging co-operation between undertakings by enabling them to set up this form of business organisation anywhere in the European Union to provide common support activities for members with unlimited liability⁵. From the date of registration of an EEIG in Great Britain the EEIG is a body corporate⁶.

1 The EC Council Regulation 2157/2001 (OJ L294, 10.11.2001, p 1) on the Statute for a European Company. The European Public Limited Liability Company Regulations 2004, SI 2004/2326, implement EC Council Directive 2001/86 (OJ L294, 10.11.2001, p 22) supplementing the Statute for a European Company with regard to the involvement of employees, and also make provision for the parts of EC Council Regulation 2157/2001 (OJ L294, 10.11.2001, p 1) which permit or oblige the member states to make certain provisions in their national law.

2 As to the European Company (Societas Europaea) see COMPANIES vol 15 (2009) PARA 1633 et seq.

3 EC Council Regulation 2157/2001 (OJ L294, 10.11.2001, p 1) art 1 para 3.

4 The EC Council Regulation 2137/85 (OJ L199, 31.7.1985, p 1), implemented in the United Kingdom by the European Economic Interest Grouping Regulations 1989, SI 1989/638, and the European Economic Interest Grouping (Fees) Regulations 2004, SI 2004/2643.

5 See COMPANIES vol 15 (2004 Reissue) PARA 1632 et seq.

6 See the European Economic Interest Grouping Regulations 1989, SI 1989/638, reg 3; and COMPANIES vol 15 (2009) PARA 1632.

UPDATE

1106 European company and European Economic Interest Groupings

NOTE 4--SI 2004/2643 revoked except for Sch 2 Fee No 3: SI 2009/2492.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/1. THE NATURE OF CORPORATIONS/(1) DEFINITIONS AND CHARACTERISTICS/(i) Classification/1107. Foreign corporations.

1107. Foreign corporations.

English courts recognise as juristic persons corporations established by foreign law by virtue of the fact of their creation and continuance under and by that law¹. However, an entity which, according to its proper law, possesses in certain respects a separate persona may not for this purpose necessarily be regarded as a corporation². Oversea companies are subject in certain respects to statutory control³. All questions relating to the constitution of a foreign corporation will be decided according to the law of the place of its incorporation⁴. This law also determines the extent of the liability of the members for the debts of the corporation⁵. A foreign corporation may enter into a transaction only if it has power to do so both under its constitution and under the proper law governing the transaction⁶. The English courts will recognise the legal personality accorded to an institution by the law of the place where it is situated, even if the institution is not a corporation as defined in English law⁷.

Where the law of the place of incorporation permits the amalgamation of existing corporations into a new entity which succeeds to the assets and liabilities of its predecessors, the new entity and its succession to those assets and liabilities will be recognised in England⁸. The new entity may be substituted as a party to proceedings by or against one of the predecessor corporations, even if the limitation period has expired before the substitution⁹.

1 *Henriques v General Privileged Dutch Co, Trading to West Indies* (1782) 2 Ld Raym 1532, HL; *Newby v Von Oppen and Colt's Patent Firearms Manufacturing Co* (1872) LR 7 QB 293; *Lazard Bros & Co v Midland Bank Ltd* [1933] AC 289 at 297, HL per Lord Wright; *Sarrio SA v Kuwait Investment Authority* [1997] 1 Lloyd's Rep 113, CA; and see CONFLICT OF LAWS vol 8(3) (Reissue) PARA 465. As to service of a claim form on a foreign corporation see PARA 1292 post; and as to the recognition of the corporate status of a body corporate purporting to have corporate status under the laws of a territory not recognised by the United Kingdom as a state see the Foreign Corporations Act 1991; and COMPANIES vol 15 (2009) PARA 1841; CONFLICT OF LAWS vol 8(3) (Reissue) PARA 466.

2 *Von Hellfeld v Rechnitzer and Mayer Frères & Co* [1914] 1 Ch 748, CA.

3 See the Companies Act 1985 Pt XXIII (ss 690A-703R) (as amended).

4 *Pickering v Stephenson* (1872) LR 14 Eq 322; *Risdon Iron and Locomotive Works v Furness* [1906] 1 KB 49, CA; *Banco de Bilbao v Sancha* [1938] 2 KB 176, [1938] 2 All ER 253, CA; *Carl Zeiss Stiftung v Rayner and Keeler Ltd (No 2)* [1967] 1 AC 853, [1966] 2 All ER 536, HL; *Janred Properties Ltd v Ente Nazionale Italiano per il Turismo* [1989] 2 All ER 444, CA. See also CONFLICT OF LAWS vol 8(3) (Reissue) PARA 470.

5 *Risdon Iron and Locomotive Works v Furness* [1906] 1 KB 49, CA; *JH Rayner (Mincing Lane) Ltd v Department of Trade and Industry* [1990] 2 AC 418, sub nom *MacLaine Watson & Co Ltd v Department of Trade and Industry* [1989] 3 All ER 523, HL.

6 *Bonanza Creek Gold Mining Co Ltd v R* [1916] 1 AC 566, PC; *Great West Saddlery Co v R* [1921] 2 AC 91, PC; *Banque Internationale de Commerce de Petrograd v Goukassow* [1923] 2 KB 682 at 690-691, CA, per Scrutton LJ. See also CONFLICT OF LAWS vol 8(3) (Reissue) PARA 465. An English court will not, however, give effect to foreign legislation which discharges a contract governed by English law entered into by a foreign corporation, or which retrospectively deprives the foreign corporation of the power to enter into or assume liability under such a contract: *National Bank of Greece and Athens SA v Metliss* [1958] AC 509, [1957] 3 All ER 608, HL; *Adams v National Bank of Greece SA* [1961] AC 255, [1960] 2 All ER 421, HL.

7 *Bumper Development Corp Ltd v Metropolitan Police Comr (Union of India, claimants)* [1991] 4 All ER 638, [1991] 1 WLR 1362, CA (Hindu temple recognised as having legal personality in the Indian state of Tamil Nadu). For the meaning of 'corporation' in English law see PARA 1101 ante. Cf *Von Hellfeld v Rechnitzer and Mayer Frères & Co* [1914] 1 Ch 748, CA (no power to sue French partnership, not carrying on business in England in firm name, in absence of evidence that by French law partnership was different legal entity from individual partners).

8 *National Bank of Greece and Athens SA v Metliss* [1958] AC 509, [1957] 3 All ER 608, HL; *Steel Authority of India Ltd v Hind Metals Inc*, *Hind Metals Inc v Sail International Ltd and Steel Authority of India Ltd* [1984] 1 Lloyd's Rep 405; and see CONFLICT OF LAWS vol 8(3) (Reissue) PARA 467.

9 *Industrie Chimiche Italia Centrale v Alexander Tsavirilis & Sons Maritime Co, The Choko Star* [1996] 1 All ER 114, [1996] 1 WLR 774; *Yorkshire Regional Health Authority v Fairclough Building Ltd* [1996] 1 All ER 519, [1996] 1 WLR 210, CA; cf *Toprak Enerji Sanayi AS v Sale Tilney Technology plc* [1994] 3 All ER 483, [1994] 1 WLR 840. As to the substitution of parties after the end of the relevant limitation period see CPR Pt 19, especially CPR 19.4, 19.5; and CIVIL PROCEDURE vol 11 (2009) PARAS 214-215.

UPDATE

1107 Foreign corporations

TEXT AND NOTE 3--Companies Act 1985 Pt XXIII repealed: Companies Act 2006 Sch 16. As to statutory control of overseas companies see Companies Act 2006 Pt 34 (ss 1044-1059); and COMPANIES vol 15 (2009) PARA 1824 et seq.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/1. THE NATURE OF CORPORATIONS/(1) DEFINITIONS AND CHARACTERISTICS/(i) Classification/1108. International organisations.

1108. International organisations.

Organisations created by an international treaty are not automatically recognised as legal entities, even if the United Kingdom is a party to the treaty¹. The legal capacities of a body corporate may, however, be conferred by Order in Council on an organisation of which the United Kingdom and any other sovereign state are members². The legal capacities may also be conferred by Order in Council on an organisation of which two or more sovereign states, but not the United Kingdom, are members if the organisation maintains or proposes to maintain an establishment in the United Kingdom³. An international organisation on which the legal capacities of a body corporate have been conferred by Order in Council is a legal entity separate from its members; and its members are not liable for its debts⁴. An international organisation which has been accorded the legal capacities of a corporation under the law of any of its member states or the state where it has its seat will be recognised by the courts of England as having that capacity⁵.

An international organisation cannot be wound up as an unregistered company under the Insolvency Act 1986⁶.

1 *JH Rayner (Mincing Lane) Ltd v Department of Trade and Industry* [1990] 2 AC 418, sub nom *Maclaine Watson & Co Ltd v Department of Trade and Industry* [1989] 3 All ER 523, HL (status of the International Tin Council).

2 See the International Organisations Act 1968 s 1(1), (2)(a) (as amended); and INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 309. For example see the International Tin Council (Immunities and Privileges) Order 1972, SI 1972/120; and the International Maritime Organisation (Immunities and Privileges) Order 2002, SI 2002/1826.

3 See the International Organisations Act 1968 s 4 (as amended); and INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 315.

4 *JH Rayner (Mincing Lane) Ltd v Department of Trade and Industry* [1990] 2 AC 418, sub nom *Maclaine Watson & Co Ltd v Department of Trade and Industry* [1989] 3 All ER 523, HL.

5 *Arab Monetary Fund v Hashim (No 3)* [1991] 2 AC 114, [1991] 1 All ER 871, HL; *Westland Helicopters Ltd v Arab Organisation for Industrialisation* [1995] QB 282, [1995] 2 All ER 387; and see PARA 1107 note 1 ante.

6 *JH Rayner (Mincing Lane) Ltd v Department of Trade and Industry* [1989] Ch 72, sub nom *Maclaine Watson & Co Ltd v Department of Trade and Industry* [1988] 3 All ER 257, CA; affd sub nom *JH Rayner (Mincing Lane) Ltd v Department of Trade and Industry* [1990] 2 AC 418, sub nom *Maclaine Watson & Co Ltd v Department of Trade and Industry* [1989] 3 All ER 523, HL.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/1. THE NATURE OF CORPORATIONS/(1) DEFINITIONS AND CHARACTERISTICS/(ii) Corporations Aggregate/1109. Meaning of 'corporation aggregate'.

(ii) Corporations Aggregate

1109. Meaning of 'corporation aggregate'.

A corporation aggregate has been defined as a collection of individuals¹ united into one body under a special denomination, having perpetual succession² under an artificial form, and vested by the policy of the law with the capacity of acting in several respects as an individual, particularly of taking and granting property, of contracting obligations and of suing and being sued, of enjoying privileges and immunities in common and of exercising a variety of political rights, more or less extensive, according to the design of its institution, or the powers conferred on it, either at the time of its creation or at any subsequent period of its existence³.

1 Some or all of the members of a corporation aggregate may, however, be other corporations rather than individuals: see PARA 1146 post.

2 A corporation may, however, be created by the Crown for a limited period: see PARA 1132 post.

3 1 Kyd on Corporations 13. The earliest definition of a corporation of which a record has been found is in *R v London Corp* (1692) Skin 310 (where it is stated to be 'an artificial body composed of divers constituent members like the human body, and that the ligaments of this body politic or artificial body are the franchises and liberties thereof which bind and unite all its members together, and the whole frame and essence of the corporation consist therein'). For a later definition see Grant, Law of Corporations 4, where a corporation is defined as 'continuous identity; endowed at its creation with capacity for endless duration; residing in the grantees of it and their successors, its acts being determined by the will of a majority of the existing body of its grantees or their successors at any given time, acting within the limits imposed by the constitution of their body politic such will being signified to strangers by writing under the common seal; having a name, and under such name a capacity for taking, holding and enjoying all kinds of property, a qualified right of disposing of its possessions, and also a capacity for taking, holding and enjoying, but inalienably, liberties, franchises, exemptions and privileges; together with the right and obligation of suing and being sued only under such name'.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/1. THE NATURE OF CORPORATIONS/(1) DEFINITIONS AND CHARACTERISTICS/(ii) Corporations Aggregate/1110. Composition and capacity.

1110. Composition and capacity.

A corporation aggregate may be either a mere body, composed of constituent parts no one of which differs essentially from another¹; or it may be a body with a head or other distinct member, the existence of which is essential to the vitality, so to speak, of the body as a whole².

A corporation aggregate has only one capacity, namely its corporate capacity, so that a conveyance to a corporation aggregate can be to it only in its corporate capacity³.

1 *Sutton's Hospital Case* (1612) 10 Co Rep 1a, 23a at 30b, Ex Ch. For the meaning of 'corporation aggregate' see PARA 1109 ante.

2 *Sutton's Hospital Case* (1612) 10 Co Rep 1a, 23a at 29b, Ex Ch. An example of a corporation with a head is a dean and chapter.

3 *Fulmerston v Steward* (1554) 1 Plowd 101 at 102b.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/1. THE NATURE OF CORPORATIONS/(1) DEFINITIONS AND CHARACTERISTICS/(iii) Corporations Sole/1111. Definition, capacity and presumption of due appointment.

(iii) Corporations Sole

1111. Definition, capacity and presumption of due appointment.

A corporation sole is a body politic having perpetual succession, constituted in a single person, who, in right of some office or function, has a capacity to take, purchase, hold and demise (and in some particular instances, under qualifications and restrictions introduced by statute, power to alienate) real property, and now, it would seem, also to take and hold personal property, to him and his successors in such office for ever, the succession being perpetual, but not always uninterruptedly continuous; that is, there may be, and often are, periods in the duration of a corporation sole, occurring irregularly, in which there is a vacancy¹, or no one in existence in whom the corporation resides and is visibly represented².

Unlike a corporation aggregate, a corporation sole has a double capacity, namely its corporate capacity and its natural or individual capacity; so that a conveyance to a corporation sole may be in either capacity³.

A corporation sole appears now⁴ to be capable of taking personality in succession⁵.

The occupant of a corporation sole is presumed to have been duly in possession of his office until the contrary is proved⁶.

1 The difficulties arising from a vacancy have been remedied by the Law of Property Act 1925 s 180(2), (3): see PARAS 1246, 1248, 1271 post.

2 The definition stated in the text is based on that contained in Grant, Law of Corporations 626.

3 *Fulmerston v Steward* (1554) 1 Plowd 101 at 102, 102b; and see PARA 1248 post. For the meaning of 'corporation aggregate' see PARA 1109 ante.

4 The common law rule was to the contrary: Grant, Law of Corporations 626.

5 See PARAS 1248 text and note 5, 1260 text and note 2 post.

6 *Monke v Butler* (1614) 1 Roll Rep 83; *Powel v Milbank* (1772) 2 Wm Bl 851 at 853, citing *Sherard's Case* (circa 1763) unreported; Grant, Law of Corporations 637.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/1. THE NATURE OF CORPORATIONS/(1) DEFINITIONS AND CHARACTERISTICS/(iii) Corporations Sole/1112. Examples of corporations sole.

1112. Examples of corporations sole.

Corporations sole were originally ecclesiastical for the most part¹, but they have never been confined to that class², and there are now many examples of lay corporations sole. The Sovereign is a corporation sole³, and many Ministers of the Crown and government officers have been created corporations sole by name⁴, with perpetual succession and a common seal, and now, generally speaking, may sue or be sued like any other corporation sole⁵; in some cases the creation is expressed to be for all purposes, while in others the purposes are defined by statute. The Public Trustee is a corporation sole⁶.

An archbishop⁷, a bishop⁸, a prebendary or canon⁹, a dean¹⁰, an archdeacon¹¹, a rector (or parson)¹², a vicar¹³, and a vicar choral¹⁴ are each a corporation sole¹⁵.

1 See the text and notes 7-15 infra; and PARA 1128 post. For the meaning of 'corporation sole' see PARA 1111 ante.

2 See Co Litt 250a; *Fulwood's Case* (1591) 4 Co Rep 64b; *Arundel's Case* (1615) Hob 64; *Howley v Knight* (1849) 14 QB 240.

3 1 Bl Com 457; Co Litt 15b, n 4; *Town Investments Ltd v Department of the Environment* [1978] AC 359 at 384, [1977] 1 All ER 813 at 820, HL, per Lord Diplock. It has also been suggested, however, that the Crown may be a corporation aggregate headed by the Queen: *Town Investments Ltd v Department of the Environment* supra at 400 and 833 per Lord Simon of Glaisdale; *Re M* [1994] 1 AC 377 at 424, sub nom *M v Home Office* [1993] 3 All ER 537 at 566, HL, per Lord Woolf. See also CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 6, 15, 353. For the meaning of 'corporation aggregate' see PARA 1109 ante.

4 See PARA 1104 note 2 ante. The corporate status of some Ministers of the Crown appears to be doubtful or anomalous. For example, the office of Prime Minister is not a corporation sole, but, if (as is customary) the Prime Minister holds the office of First Lord of the Treasury, he is in that capacity one of the Commissioners of Her Majesty's Treasury, and the Commissioners may constitute a corporation aggregate in which the office of the Lord High Treasurer is vested: see the Consolidated Fund Act 1816 ss 2, 3 (both as amended); and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-513.

5 As to Crown privileges and limitations on proceedings against the Crown, and as to the status of government departments as agents of the Crown, see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 381 et seq. As to procedure in litigation by or against the Crown generally see CROWN PROCEEDINGS AND CROWN PRACTICE.

6 See the Public Trustee Act 1906 s 1(2); and TRUSTS vol 48 (2007 Reissue) PARA 767. As to the Public Trustee as a trust corporation see TRUSTS vol 48 (2007 Reissue) PARA 798.

7 1 Roll Abr 512.

8 Co Litt 250a. A Roman Catholic bishop is not a corporation sole: *A-G v Power* (1809) 1 Ball & B 145 at 149; and see *In the Goods of Lalor* (1901) 71 LJP 17; *Kehoe v Marquess of Lansdowne* [1893] AC 451 at 457, HL, per Lord Herschell.

9 *Mirehouse v Rennell* (1833) 1 Cl & Fin 527 at 538, HL.

10 There are various kinds of deans some only of which are corporations sole: see 1 Bl Com 457.

11 See *Tufnell v Constable* (1838) 7 Ad & El 798.

12 See *Tufnell v Constable* (1838) 7 Ad & El 798.

13 1 Bl Com 457; and see ECCLESIASTICAL LAW vol 14 paras 771, 1254.

14 *Gleaves v Parfitt* (1860) 7 CBNS 838.

15 See also PARA 1128 post.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/1. THE NATURE OF CORPORATIONS/(1) DEFINITIONS AND CHARACTERISTICS/(iv) Characteristics of Corporations/1113. Corporation is a distinct entity.

(iv) Characteristics of Corporations

1113. Corporation is a distinct entity.

The nature of a corporation may be shown by contrasting it, as a legal conception, with the individuals or mass of individuals in which it resides. In law the individual corporators, or members, of which it is composed are something wholly different from the corporation itself¹, for a corporation is a legal person just as much as an individual². If an individual trusts a corporation, he trusts that legal person, and must look to its assets for payment; he may call on individual members to contribute only if the Act or charter creating the corporation has so provided³. The liability of an individual member is not increased by the fact that he is the sole person beneficially interested in the property of the corporation, and that the other members have become members merely for the purpose of enabling the corporation to become incorporated and possess but a nominal interest in its property, or hold their interest in trust for him⁴. Notice to an individual who happens to be a member of a corporation aggregate but has no authority to receive notices is not equivalent to notice to the corporate body⁵; and, where an action is maintainable by and in the name of a corporation, it cannot be maintained by individual members of the corporation⁶. After the dissolution of a corporation the members, in their natural capacities, may neither recover debts which are due to the late corporation nor be charged with debts contracted by it⁷.

1 *Acland v Lewis* (1860) as reported in K & G 334 at 343 per Erle CJ; *Society of Practical Knowledge v Abbott* (1840) 2 Beav 559. See also *Salomon v A Salomon & Co Ltd* [1897] AC 22, HL; *Re Wragg Ltd* [1897] 1 Ch 796, CA; *Munkittrick v Perryman and Hands* (1896) 74 LT 149; and the cases cited in COMPANIES vol 14 (2009) PARA 120.

2 *Re Sheffield and South Yorkshire Permanent Building Society* (1889) 22 QBD 470 at 476 per Cave J. See further PARA 1223 et seq post.

3 *Re Sheffield and South Yorkshire Permanent Building Society* (1889) 22 QBD 470. See also PARA 1133 post. The Companies Act 1985 s 1(2) authorises the incorporation of companies in a manner which imposes on their members a limited or unlimited liability in respect of the obligations of the company.

4 *Salomon v A Salomon & Co Ltd* [1897] AC 22, HL.

5 *Steward v Dunn* (1844) 1 Dow & L 642 at 649. See further PARA 1160 note 1 post; and COMPANIES vol 14 (2009) PARA 127. For the meaning of 'corporation aggregate' see PARA 1109 ante.

6 *Mozley v Alston* (1847) 1 Ph 790; *Foss v Harbottle* (1843) 2 Hare 461 at 490; *Cooch v Goodman* (1842) 2 QB 580. See further PARA 1291 post; and COMPANIES vol 14 (2009) PARA 455.

7 See PARA 1304 post.

UPDATE

1113 Corporation is a distinct entity

NOTE 3--Companies Act 1985 s 1(2) replaced by Companies Act 2006 s 3: see COMPANIES vol 14 (2009) PARA 102.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/1. THE NATURE OF CORPORATIONS/(1) DEFINITIONS AND CHARACTERISTICS/(iv) Characteristics of Corporations/1114. Continuity.

1114. Continuity.

An essential element in the legal conception of a corporation is that its identity is continuous, that is to say that the original member or members and his or their successors are one¹. Accordingly, once a liability or obligation has become binding on a corporation, whether sole or aggregate, it will bind the successors, even though they are not expressly named².

1 Grant, Law of Corporations 20.

2 Co Litt 144b, n 2; and see PARAS 1269, 1271 post. Where by an Act of Parliament a power is given to a corporation simply, as eg to a bishop without any mention of his Christian name, the power will vest in his successors without the words 'for the time being': *Bentley v Bishop of Ely* (1726) Fortes Rep 298 at 299; revsd without reference to this point sub nom *Bishop of Ely v Bentley* (1732) 2 Bro Parl Cas 220, HL. As to liability for breach of trust see PARA 1244 post.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/1. THE NATURE OF CORPORATIONS/(1) DEFINITIONS AND CHARACTERISTICS/(iv) Characteristics of Corporations/1115. Corporations and Crown status.

1115. Corporations and Crown status.

Unlike Ministers of the Crown (who are often corporations sole and are part of 'the Crown' when that term is used in the sense of 'the government'¹), a corporation aggregate created by Act of Parliament, such as the Civil Aviation Authority², will not be entitled to Crown immunities, as being a servant or agent of the Crown³, unless the statute creating the corporation expressly enacts that it acts on behalf of the Crown⁴, or unless the corporation is otherwise rightly regarded as such a servant or agent⁵, or the title to the immunity is the logical and necessary consequence of the character of the corporation's powers and responsibilities⁶. It has now become customary, in statutes incorporating public corporations having commercial functions, to specify that the corporation is not to be regarded as the servant or agent of the Crown, or as enjoying any status, immunity or privilege of the Crown, and that its property is not to be regarded as property of or property held on behalf of the Crown⁷. A corporation not subject to control by the Crown is not entitled to Crown immunities on the ground that it is performing a public duty or providing a public service⁸.

The question whether a corporation is a servant or agent of the Crown depends on the degree of control which the Crown, through its ministers, may exercise over it in the performance of its duties⁹. In the absence of any express statutory provision, the proper inference, at any rate in the case of a commercial corporation, is that it acts on its own behalf, even though it is controlled to some extent by a government department¹⁰. The fact that a Minister of the Crown appoints the members of such a corporation, is entitled to require them to give him information and is entitled to give them directions of a general nature does not make the corporation his agent¹¹. The inference that a corporation acts on behalf of the Crown is more readily drawn where its functions are not commercial but are connected with matters such as the defence of the realm, which are essentially the province of government¹².

1 See PARAS 1104, 1112 ante. See also *Town Investments Ltd v Department of the Environment* [1978] AC 359, [1977] 1 All ER 813, HL.

2 The Civil Aviation Authority was incorporated by the Civil Aviation Act 1971 s 1 (repealed) and continued in being by the Civil Aviation Act 1982 s 2(1): see AIR LAW vol 2 (2008) PARA 50 et seq. For the meaning of 'corporation aggregate' see PARA 1109 ante.

3 The phrase 'emanation of the Crown' used in *Gilbert v Trinity House Corp*n (1886) 17 QBD 795 at 801, DC, is not suited to a corporation aggregate; to use the words 'servant or agent' of the Crown in preference to 'emanation of the Crown' avoids obscurity (*International Rly Co v Niagara Parks Commission* [1941] AC 328 at 343, [1941] 2 All ER 456 at 462, PC); and see *Bank voor Handel en Scheepvaart NV v Slatford* [1953] 1 QB 248 at 284, [1952] 2 All ER 956 at 964, CA, per Sir Raymond Evershed MR (revsd on another point sub nom *Bank voor Handel en Scheepvaart NV v Administrator of Hungarian Property* [1954] AC 584, [1954] 1 All ER 969, HL).

4 See eg the National Health Service Act 1977 s 16D (as added and amended) (power of the Secretary of State to direct a strategic health authority, health authority, special health authority or a primary care trust to exercise on his behalf specified functions relating to the health service): see HEALTH SERVICES vol 54 (2008) PARAS 106, 127, 142. See also *Pfizer Corp*n v *Ministry of Health* [1965] AC 512, [1965] 1 All ER 450, HL; *Mellenger v New Brunswick Development Corp*n [1971] 2 All ER 593, [1971] 1 WLR 604, CA.

5 *Tamlin v Hannaford* [1950] 1 KB 18, [1949] 2 All ER 327, CA.

6 *Bank voor Handel en Scheepvaart NV v Administrator of Hungarian Property* [1954] AC 584, [1954] 1 All ER 969, HL (Custodian of Enemy Property, a servant of the Crown); *Administrator of Austrian Property v Russian Bank of Foreign Trade* (1932) 48 TLR 37, CA (administrator, a servant of Crown); *London County Territorial and Auxiliary Forces Association v Nichols* [1949] 1 KB 35, [1948] 2 All ER 432, CA (Territorial Association entitled to Crown status); and see *Wheeler v Public Works Comrs* [1903] 2 IR 202 at 229 per Palles CB, cited in *Mackenzie-Kennedy v Air Council* [1927] 2 KB 517 at 523, CA. As to Crown immunities see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 381 et seq; and as to proceedings by or against the Crown see CROWN PROCEEDINGS AND CROWN PRACTICE.

7 See eg the Civil Aviation Act 1982 s 2(4) (Civil Aviation Authority: see AIR LAW vol 2 (2008) PARA 50); and the Education Act 1997 s 21, Sch 4 para 1 (Qualifications and Curriculum Authority: see EDUCATION vol 15(1) (Reissue) PARA 689 et seq).

8 *Mersey Docks and Harbour Board v Cameron* (1865) 11 HL Cas 443; *British Broadcasting Corp*n v *Johns* [1965] Ch 32, [1964] 1 All ER 923, CA; *Greig v Edinburgh University* (1868) LR 1 Sc & Div 348, HL.

9 See *Bank voor Handel en Scheepvaart NV v Administrator of Hungarian Property* [1954] AC 584 at 616, [1954] 1 All ER 969 at 982, HL, per Lord Reid.

10 *Tamlin v Hannaford* [1950] 1 KB 18, [1949] 2 All ER 327, CA.

11 *Tamlin v Hannaford* [1950] 1 KB 18 at 25, [1949] 2 All ER 327 at 329, CA.

12 *London County Territorial and Auxiliary Forces Association v Nichols* [1949] 1 KB 35 at 47, [1948] 2 All ER 432 at 434, CA; *Territorial Forces Association v Philpot* [1947] 2 All ER 376; *Tamlin v Hannaford* [1950] 1 KB 18, [1949] 2 All ER 327, CA. Where, however, a statute specially incorporated the Commissioners of Works, for the purposes of the statute, the corporation was held not to be entitled to Crown immunity either because it did not represent the Crown or because provisions negating the particular immunity claimed were incorporated into the statute: *Re Wood's Estate, ex p Works and Buildings Comrs* (1886) 31 ChD 607 at 619, 621, 622, CA.

UPDATE

1115 Corporations and Crown status

NOTE 7--Education Act 1997 s 21, Sch 4 repealed: Apprenticeships, Skills, Children and Learning Act 2009 Sch 12 paras 13, 24, Sch 16 Pt 4.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/1. THE NATURE OF CORPORATIONS/ (2) THE NAME/1116. Name essential.

(2) THE NAME

1116. Name essential.

A name¹ is essential to a corporation², and, in the case of a corporation created by grant of a charter or by a special Act, the name must be either expressed in the grant or Act or implied from the nature of it³. It is not necessary that the name should be connected with some definite place⁴, except where it is so provided by statute⁵.

A corporation may be named by a private person, but the name, by whomsoever conferred, must be sanctioned directly or indirectly by the authority of the Crown or Parliament⁶.

1 The name of a corporation in grants or conveyances must be the same in substance as the proper name of the corporation, although it need not be the same in syllables and words, and, therefore, where a select body is given, by Act of Parliament, authority to do certain acts under the corporate seal, those acts should be expressed to be done in the name of the corporation and not in that of the select body: *R v Haughley Inhabitants* (1833) 1 Nev & MKB 525 at 529 per Parke J.

2 *River Tone Conservators v Ash* (1829) 10 B & C 349 at 384 per Littledale J.

3 Thus when the King incorporated the inhabitants of Dale with power to choose a mayor annually, incorporation by the name of the mayor and commonalty was held to have been intended: *President and College of Physicians v Salmon* (1701) 1 Ld Raym 680. An Act may, however, make provision for the name to be selected subsequently: see the Local Government Act 1972 s 18, Sch 3 para 1 (naming of districts in England); and LOCAL GOVERNMENT vol 69 (2009) PARA 24. As to the creation of corporations by charter see PARA 1130 et seq post. As to the creation of corporations by statute see PARA 1143 et seq post.

4 Grant, Law of Corporations 53-54; and see *Sherborn v Lewis* (1597) Gouldsb 120.

5 Thus the name of the council of a county, district or parish in England must include the name of the county, district or parish: see the Local Government Act 1972 ss 2(3), 14(2); and LOCAL GOVERNMENT vol 69 (2009) PARAS 5, 24, 33. As to the requirement that the name of a company regulated by the Companies Act 1985 should be stated in its memorandum of association see COMPANIES vol 14 (2009) PARAS 78, 79, 81, 104.

6 *Sutton's Hospital Case* (1612) 10 Co Rep 1a, 23a at 28b, Ex Ch. Statutes which permit incorporation by registration contain certain restrictions on the power of the applicants to select the name of the corporation: see the Companies Act 1985 Pt I Ch II (ss 25-34A) (as amended); the Building Societies Act 1986 s 107 (as amended) (see FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 2059); and the Industrial and Provident Societies Act 1965 s 5 (as amended) (see FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARAS 2439-2441).

UPDATE

1116 Name essential

NOTES 5, 6--Companies Act 1985 replaced for the most part by Companies Act 2006.

NOTE 6--As to a company's name see now Companies Act 2006 Pt 5 (ss 53-85): see COMPANIES vol 14 (2009) PARA 196 et seq.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/1. THE NATURE OF CORPORATIONS/ (2) THE NAME/1117. More than one name.

1117. More than one name.

A corporation may have different names for different purposes¹. It may have more than one name by prescription, or by prescription and by grant, but not by grant alone; hence, if a corporation has a name by grant, and subsequently receives another name by grant, the former name will be extinguished by the latter². However, a corporation of modern date, unlike an ancient corporation, cannot by prescription acquire a name different from that by which it was incorporated³.

A company capable of being wound up under the Insolvency Act 1986⁴ must not without the written approval of the Secretary of State carry on business under a name which does not consist of its corporate name without any addition and which would be likely to give the impression that the business is connected with Her Majesty's government or with any local authority, or includes any word or expression for the time being specified in regulations⁵.

1 *College of Physicians v Butler* (1632) W Jo 261.

2 *Knight v Wells Corpn* (1696) 1 Ld Raym 80.

3 *R v Haughley Inhabitants* (1833) 1 Nev & MKB 525 at 529 per Denman CJ. As to the creation of corporations see PARA 1128 et seq post.

4 As to the companies capable of being wound up under the Insolvency Act 1986 see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 432 et seq; COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARA 1146.

5 See the Business Names Act 1985 ss 1, 2 (both as amended); the Company and Business Names Regulations 1981, SI 1981/1685 (as amended).

UPDATE

1117 More than one name

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 5--Business Names Act 1985 ss 1, 2 repealed: Companies Act 2006 Sch 16. As to the business names provisions of the Companies Act 2006 see Pt 41 Ch 1 (ss 1192-1199); and COMPANIES vol 14 (2009) PARA 223 et seq. SI 1981/1685 (as amended) replaced: Company, Limited Liability Partnership and Business Names (Sensitive Words and Expressions) Regulations 2009, SI 2009/2615 (see COMPANIES vol 14 (2009) PARAS 196, 224).

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/1. THE NATURE OF CORPORATIONS/ (2) THE NAME/1118. Use of name.

1118. Use of name.

A corporation aggregate may act by its corporate name without showing the proper names of its members; but an ecclesiastical corporation sole must use his name of baptism¹. A corporation aggregate may sue only in its corporate name, and not in the proper name or names of the persons of which it happens to be composed at the time². It may sue by its name of incorporation, although it has an express power to sue by another³. In some cases a corporation has, however, been expressly authorised by statute to sue and be sued in the name of one of its officers⁴.

1 *Newton v Travers* (1696) 3 Salk 103. Examples are 'Rowan Cantuar' and 'John Ebor' in the case of the present Archbishops of Canterbury and York respectively. For the meaning of 'corporation aggregate' see PARA 1109 ante. For the meaning of 'corporation sole' see PARA 1111 ante.

2 See *Foss v Harbottle* (1843) 2 Hare 461. The same rule applied in criminal prosecutions: see *R v Patrick and Pepper* (1783) 1 Leach 253. See further COMPANIES vol 14 (2009) PARA 462.

3 *President and College of Physicians v Salmon* (1701) 1 Ld Raym 680. See also PARAS 1286-1287 post. As to the creation of corporations see PARA 1128 et seq post.

4 See PARAS 1286-1287 post.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/1. THE NATURE OF CORPORATIONS/ (2) THE NAME/1119. Change of name.

1119. Change of name.

A corporation may have its name changed¹, by royal charter or by Act of Parliament², without thereby depriving it of, or affecting any of, its rights, franchises, privileges or obligations³, whether they originated by grant or prescription⁴.

Where a corporation has had its name changed, it must prescribe in its ancient name down to the time when that name was superseded by the new name, and thenceforward in the new name⁵. All legal proceedings should be in the new name⁶, and accordingly it should sue in its new name for a debt which has accrued due before the change of name⁷.

1 *Anon* (1435) Jenk 99.

2 *R v Haughley Inhabitants* (1833) 1 Nev & MKB 525; and see *R v Whitmarsh* (1850) 14 QB 803; *Re Sheffield, Rotherham and Chesterfield Fire and Life Insurance Co* (1847) 16 LJB 407 at 409. As to the creation of corporations by charter see PARA 1130 et seq post. As to the creation of corporations by statute see PARA 1143 et seq post. As to the method by which a company regulated by the Companies Act 1985 may change its name see COMPANIES.

3 *Colchester Corpn v Seaber* (1766) 3 Burr 1866 at 1873.

4 *Luttrell's Case* (1601) 4 Co Rep 86a at 87b, Ex Ch.

5 *A-G v Farnham* (1669) Hard 504.

6 *Colchester Corpn v Seaber* (1766) 3 Burr 1866; cf COMPANIES vol 14 (2009) PARA 218.

7 *Scarborough Corpn v Butler* (1685) 3 Lev 237. Where the name of an existing corporation has been changed by a new charter and a bond is given by it in its new name, an action on the bond should not be brought against the corporation in its old name, even with the new name added as an alternative: *Knight v Wells Corpn* (1696) 1 Lut 508.

UPDATE

1119 Change of name

NOTE 2--Companies Act 1985 replaced for the most part by Companies Act 2006. As to changes of a company name see Companies Act 2006 Pt 5 Ch 5 (ss 77-81); and COMPANIES vol 14 (2009) PARAS 217-219.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/1. THE NATURE OF CORPORATIONS/ (2) THE NAME/1120. Misnomer.

1120. Misnomer.

A grant made to a corporation by any other than its true name will not render the grant bad if the name given is sufficient to indicate the true intention of the grantor and clearly to distinguish the grantee from others¹. Where in a lease granted by a corporation the name of the corporation has been misstated, the court will, if the lease is in other respects good, maintain it and not allow the corporation to take advantage of the error².

A corporation should sue in its right name in respect of a gift or obligation made to it in a wrong name³.

Mere misdescription or misnomer of a body corporate in legal proceedings is a matter which may be rectified by amendment⁴; but where the body corporate mentioned does not in fact exist, an objection taken on that ground goes to the root of the whole proceedings, which are, therefore, bad⁵. A claim brought in the trading name of a foreign trader, although erroneously on the footing that the foreign party is an incorporated body, may, however, be amended, the case being regarded as one of misdescription rather than of a non-existent claimant⁶. The court may not take judicial notice that the corporation which appears on the record does not exist⁷.

1 *Dr Ayray's Case* (1614) 11 Co Rep 18b, 21a.

2 *Dean and Chapter of Bristol's Case* (1603) Cary 44; *Croydon Hospital v Farley* (1816) 6 Taunt 467 (where the correct name of a corporation was 'The Wardein and Poore of the Hospitall of the Holie Trinitie in Croydon, of the Foundation of John Whitegift, Archbishop of Canterbury', but the description of it as the 'Wardein and Poore of the Hospitall of the Holie Trinitie in Croydon' in a deed of conveyance of lands by the corporation was held to be sufficient); *A-G v Rye Corpn* (1817) 1 Moore CP 267 (where a devise of lands for the establishment of a school to 'the right worshipful the mayor, jurats, and town council of Rye' was held sufficient to pass such lands to the corporation of Rye, the correct description of which was 'the mayor, jurats and commonalty of Rye').

3 *Abbot of York's Case* (1465) cited in 10 Co Rep 125b.

4 *Stafford Corpn v Bolton* (1797) 1 Bos & P 40; *Mitchell v Harris Engineering Co Ltd* [1967] 2 QB 703, [1967] 2 All ER 682, CA. See also *Singh v Atombrook Ltd* [1989] 1 All ER 385, [1989] 1 WLR 810, CA (where a writ served on a company in its business name was amended); and CIVIL PROCEDURE vol 11 (2009) PARA 216.

5 *Doe d Malden Corpn v Miller* (1818) 1 B & Ald 699. The same principle applies where a foreign corporation has been dissolved by the law of the country in which it was incorporated: see eg *Lazard Bros & Co v Midland Bank* [1933] AC 289, HL; and CONFLICT OF LAWS vol 8(3) (Reissue) PARAS 14, 465, 468.

6 *Etablissement Baudelot v RS Graham & Co Ltd* [1953] 2 QB 271, [1953] 1 All ER 149, CA. As to the amendment of statements of case see CIVIL PROCEDURE vol 11 (2009) PARA 607 et seq.

7 *Cooch v Goodman* (1842) 2 QB 580.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/1. THE NATURE OF CORPORATIONS/ (2) THE NAME/1121. Protection of names, uniforms etc of chartered associations.

1121. Protection of names, uniforms etc of chartered associations.

Her Majesty may from time to time, on the application of any association incorporated by royal charter not being an association representative of any profession or business, by Order in Council¹ protect:

- 1 (1) the name of the association;
- 2 (2) any special name or designation specified in the order and used by the association for its members, or for the members of an organisation constituted by the association in pursuance of its charter;

- 3 (3) any uniform with distinctive markings or badges used by the association; and
- 4 (4) any badge to be worn without uniform used by the association and described in the order².

However, nothing in any such order or in the Chartered Associations (Protection of Names and Uniforms) Act 1926 is to deprive any bona fide national organisation of the right to use any designation, uniform or badge which was in regular use by that organisation at the time of the passing of that Act³.

Where the use by an association of any name, designation, uniform or badge has been so protected, a person must not, without the authority of the association, use the name, designation, uniform or badge the use of which is so protected, or any name, designation, uniform or badge so closely resembling the name, designation, uniform or badge the use of which is so protected as to lead to the belief that it is that name, designation, uniform or badge⁴.

If, however, any person acts in contravention of the provisions described above, he is liable in respect of each offence on summary conviction to a fine⁵; but this does not prevent any person from wearing or using any uniform, badge or distinctive marking in the course or for the purpose of a stage play or representation, or a music-hall or circus performance, pageant or production of a cinematograph film if the uniform, badge or distinctive mark is not worn or used in such a manner or under such circumstances as to bring it into contempt⁶.

1 Orders in Council made under such power must be laid before Parliament and are subject to annulment in pursuance of a resolution of either House of Parliament: see the Chartered Associations (Protection of Names and Uniforms) Act 1926 s 1(2)(iii); and the Statutory Instruments Act 1946 ss 4(3), 5(2). An Order in Council may be amended or revoked by a subsequent Order in Council: Chartered Associations (Protection of Names and Uniforms) Act 1926 s 1(2)(iv).

2 Ibid s 1(1). Notice of an application must be given in such manner and accompanied by such particulars as the Lord Chancellor may direct: s 1(2)(i) (amended by virtue of the Transfer of Functions (Miscellaneous) Order 2001, SI 2001/3500, art 8, Sch 2 Pt I para 3). On application for the protection of a uniform an exact and detailed description of the uniform, both in respect to form and colour, must be furnished, such as to indicate clearly what are the precise extent and limits of the protection to be granted: see the Chartered Associations (Protection of Names and Uniforms) Act 1926 s 2. The Lord Chancellor must consider any objections to an order which are made by or on behalf of any persons or societies affected or likely to be affected by it: s 1(2)(ii) (amended by virtue of the Transfer of Functions (Miscellaneous) Order 2001, SI 2001/3500, art 8, Sch 2 Pt I para 3).

A uniform or badge that has been registered as a design may be protected notwithstanding that the right in the registered design has expired (see the Chartered Associations (Protection of Names and Uniforms) Act 1926 s 1(5) (amended by the Copyright, Designs and Patents Act 1988 s 303(1), Sch 7 para 2)). However, there is a restriction on making orders for the protection of any product, other than a badge or decoration, in respect of which or any part of which a design has been registered, unless the owner of the design is willing to permit and permits the use of it without fee or reward by any person, firm or corporation willing to supply the product to any member or members of the association: see the Chartered Associations (Protection of Names and Uniforms) Act 1926 s 3 (amended by the Registered Designs Regulations 2001, SI 2001/3949, reg 9(1), Sch 1 para 1). Nothing in the Chartered Associations (Protection of Names and Uniforms) Act 1926 prevents the continued use of any mark or device which had been bona fide used as a trade mark before that Act came into force: see s 3.

In exercise of the power so conferred Her Majesty has made the following orders: the Chartered Associations (Venerable Order of St John of Jerusalem) Protection Order 1927, SR & O 1927/1059; the Chartered Associations (British Legion) Protection Order 1931, SR & O 1931/929; the Chartered Associations (Royal Life Saving Society) Protection Order 1931, SR & O 1931/1099; the Chartered Associations (Scout Association) Protection Order 1967, SI 1967/1673; the Chartered Associations (Girl Guides Association) Protection Order 1970, SI 1970/1944; and the Chartered Associations (National Society for the Prevention of Cruelty to Children) Protection Order 1985, SI 1985/611.

3 Chartered Associations (Protection of Names and Uniforms) Act 1926 s 1(1) proviso.

4 Ibid s 1(3).

⁵ le a fine not exceeding level 1 on the standard scale: *ibid* s 1(4) (amended by the Criminal Justice Act 1982 ss 37, 46). 'Standard scale' means the standard scale of maximum fines for summary offences as set out in the Criminal Justice Act 1982 s 37 (as amended): see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 142. At the date at which this volume states the law, the standard scale is as follows: level 1, £200; level 2, £500; level 3, £1,000; level 4, £2,500; level 5, £5,000: Criminal Justice Act 1982 s 37(2) (substituted by the Criminal Justice Act 1991 s 17(1)). As to the determination of the amount of the fine actually imposed, as distinct from the level on the standard scale which it may not exceed, see the Criminal Justice Act 2003 s 164; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 144.

⁶ Chartered Associations (Protection of Names and Uniforms) Act 1926 s 1(4) proviso.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/1. THE NATURE OF CORPORATIONS/(3) THE SEAL/1122. To what extent a seal is requisite.

(3) THE SEAL

1122. To what extent a seal is requisite.

A corporation sole does not require a corporate seal¹; but it seems that a person executing a deed in his capacity as a corporation sole still needs to use a wafer seal². Secretaries of State and other ministers who are corporations sole generally have a corporate seal; and statutory provision is made for the authentication of the seal³.

Companies regulated by the Companies Act 1985 need not now have a common seal⁴. Other forms of corporate body, including friendly societies⁵, charity trustees incorporated under Part VII of the Charities Act 1993⁶ and open-ended investment companies⁷, are similarly relieved from the need to have a common seal.

Other corporations aggregate continue to need a common seal for the execution of deeds⁸, although they no longer require the seal to enter into a contract⁹. Parish councils in England¹⁰ and community councils in Wales¹¹ do not have their own seals but may execute deeds under the seals of certain members.

A company regulated by the Companies Act 1985 which has a common seal and whose objects require or comprise the transaction of business in foreign countries may, if authorised by its articles, have an official seal for use in any territory, district or place elsewhere than in the United Kingdom, which must be a facsimile of its common seal, with the addition on its face of the name of every territory, district or place where it is to be used¹². The official seal, when duly affixed to a document, has the same effect as the company's common seal¹³. A company having an official seal for use in any such territory, district or place may, by writing under its common seal, authorise any person appointed for the purpose in that territory, district or place to affix the official seal to any deed or other document to which the company is party in that territory, district or place¹⁴. The person affixing the official seal must certify in writing on the deed or other instrument to which the seal is affixed the date on which and the place at which it is affixed¹⁵.

¹ 1 Bl Com 464. For the meaning of 'corporation sole' see PARA 1111 ante.

² Any rule of law which required a seal for the valid execution of an instrument as a deed by an individual has, except in relation to a corporation sole, been abolished: see the Law of Property (Miscellaneous Provisions) Act 1989 s 1(1)(b), (10); and DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARA 32.

³ See eg the Treasury Solicitor Act 1876 s 1; the Secretary of State for Foreign and Commonwealth Affairs Order 1983, SI 1983/146, art 2; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 541. See also the Ministers of the Crown Act 1975 s 3; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 363.

- 4 See the Companies Act 1985 s 36A(1), (3) (as added); and PARA 1263 post.
- 5 See the Friendly Societies Act 1992 s 7(6), Sch 6 para 2; and FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 2118.
- 6 See the Charities Act 1993 s 60; and CHARITIES vol 8 (2010) PARA 261.
- 7 See the Open-Ended Investment Companies Regulations 2001, SI 2001/1228, reg 57(3); and FINANCIAL SERVICES AND INVESTMENTS vol 49 (2008) PARA 647.
- 8 Statutes incorporating public corporations generally provide for the corporation to have a common seal and for its affixation and authentication: see eg the Atomic Energy Authority Act 1954 s 1 (as amended), Sch 1 paras 1, 8, 9; and FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1363. As to the execution of deeds and documents see PARA 1261 et seq post. For the meaning of 'corporation aggregate' see PARA 1109 ante.
- 9 Formerly a corporation aggregate, with considerable exceptions, could enter into contracts under seal only (see *Church v Imperial Gas Light and Coke Co* (1838) 6 Ad & El 846 at 861 per Lord Denman CJ); but see now the Corporate Bodies' Contracts Act 1960 s 1(1); the Companies Act 1985 s 36 (as substituted), s 36A (as added); and PARAS 1261 et seq, 1272 post.
- 10 See the Local Government Act 1972 s 14(3); and LOCAL GOVERNMENT vol 69 (2009) PARA 33.
- 11 See *ibid* s 33(3), (4) (as substituted); and LOCAL GOVERNMENT vol 69 (2009) PARA 45.
- 12 Companies Act 1985 s 39(1) (amended by the Companies Act 1989 s 130(7), Sch 17 para 2(1), (2)).
- 13 Companies Act 1985 s 39(2) (substituted by the Companies Act 1989 Sch 17 para 2(1), (3)).
- 14 Companies Act 1985 s 39(3). As between the company and a person dealing with such an agent, the agent's authority continues during the period, if any, mentioned in the instrument conferring the authority, or, if no period is there mentioned, then until notice of the revocation or determination of the agent's authority has been given to the person dealing with him: s 39(4).
- 15 *Ibid* s 39(5).

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/1. THE NATURE OF CORPORATIONS/(3) THE SEAL/1123. Power of possessing and using seal.

1123. Power of possessing and using seal.

The power to possess, use and change a seal is incidental to a corporation¹. In the absence of any special and legally binding regulations to the contrary², the seal affixed to the deed of a corporation need not bear any special emblem to indicate that it is the corporate seal, and, as in the case of execution by a natural person, any seal, even another person's, will do³ so long as the seal which is used is applied as the seal of the corporation for the time being⁴.

The existence of a common seal is evidence of incorporation and the non-existence of a common seal is evidence against incorporation, but in neither case is it conclusive⁵.

1 *Sutton's Hospital Case* (1612) 10 Co Rep 1a, 23a at 30b, Ex Ch; Vin Abr, Corporations, G, pl 2 note. A quasi corporation (see PARAS 1101-1102 ante), being only a corporation for certain purposes, has no common seal at common law: *Re Stratford Bridge Improvement Act, ex p Annesley* (1836) 2 Y & C Ex 350 at 353.

2 In some cases the use of a seal not bearing the corporation's name engraved on it is subject to penalties (see eg the Companies Act 1985 s 350(2)), but is not prohibited so that deeds executed under such a seal may bind the corporation (*OTV Birwelco Ltd v Technical and General Guarantee Co Ltd* [2002] EWHC 2240, [2002] 4 All ER 668; and see DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARA 42).

3 See Shep Touch 57. As to the execution of deeds and documents see PARA 1261 et seq post. As to the sealing of deeds generally see DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARA 40 et seq.

4 *Yarmouth Corpn and Cowper's Case* (1630) Godb 439; *Cooch v Goodman* (1842) 2 QB 580; *Anon* (1700) 12 Mod Rep 423.

5 *Baxter v Mann* (1838) cited in 2 QB 593; Grant, Law of Corporations 58; *R v Lord Dacres* (1553) 1 Dyer 81a; and see *A-G v Chester Corpn* (1849) 1 H & Tw 46. As to the creation of corporations see PARA 1128 et seq post.

UPDATE

1123 Power of possessing and using seal

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 2--Companies Act 1985 s 350(2) replaced by Companies Act 2006 s 45(4), (5): see COMPANIES vol 14 (2009) PARA 283.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/1. THE NATURE OF CORPORATIONS/(3) THE SEAL/1124. Rights and duties of custodian of seal.

1124. Rights and duties of custodian of seal.

Where the custodian of the common seal is called on to affix it to an instrument, he has a right to satisfy himself that the instrument is a proper one, and for that purpose, except in simple cases, the instrument should be tendered to him before sealing¹.

If a corporate officer refuses to apply the corporate seal in accordance with the legitimate direction to do so of a majority of the members, the latter may, if the corporation is one which discharges public functions, compel him by judicial review to comply with that direction². Moreover, for this purpose, a mandatory order will be granted on an application for judicial review of a stranger to the corporation who has acquired under the resolution an inchoate right to have the seal applied³.

1 *R v Kendall* (1841) 1 QB 366. As to the requirement to have a corporate seal see PARA 1122 ante. See also PARAS 1261-1262 post.

2 *R v Windham* (1776) 1 Cowp 377; *R v Kendall* (1841) 1 QB 366.

3 *R v Kendall* (1841) 1 QB 366.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/1. THE NATURE OF CORPORATIONS/(4) DOMICILE, RESIDENCE AND NATIONALITY/1125. Domicile and residence.

(4) DOMICILE, RESIDENCE AND NATIONALITY

1125. Domicile and residence.

A corporation, like an individual, is regarded as having a domicile and a residence. Unless otherwise provided by statute, a corporation is domiciled in the jurisdiction under the laws of which it is incorporated, and cannot change that domicile even if it carries on business or is controlled elsewhere¹.

The domicile of a corporation is important:

- 5 (1) for the purposes of the EC Regulation on the Jurisdiction and Recognition and Enforcement of Judgments in Civil and Commercial Matters, the Brussels Convention and the Lugano Convention², which determine which courts have jurisdiction in disputes between parties domiciled in different member states of the European Community or the European Free Trade Association; and
- 6 (2) for the purposes of determining which courts have jurisdiction in disputes between parties domiciled in different parts of the United Kingdom³.

For the purposes of the Brussels Convention, the Lugano Convention and the Civil Jurisdiction and Judgments Act 1982, the seat of a corporation is treated as its domicile⁴.

The place of residence of a corporation is mainly relevant for the purposes of revenue law⁵. A company which is incorporated in the United Kingdom is regarded for the purposes of the Taxes Acts as resident there⁶. A company incorporated outside the United Kingdom is resident in the United Kingdom if its central management and control is in the United Kingdom⁷. A company may have more than one residence⁸.

Residence will also be important in time of war as a factor in determining whether a corporation is invested with enemy character⁹.

A corporation may have only one ordinary residence, save in exceptional circumstances¹⁰.

1 *Gasque v IRC* [1940] 2 KB 80; *Kuenigl v Donnersmarck* [1955] 1 QB 515, [1955] 1 All ER 46; *Carl Zeiss Stiftung v Rayner & Keeler Ltd (No 3)* [1970] Ch 506 at 544, [1969] 3 All ER 897 at 914; and see COMPANIES vol 14 (2009) PARA 122; CONFLICT OF LAWS vol 8(3) (Reissue) PARA 469. As to the creation of corporations see PARA 1128 et seq post.

2 EC Council Regulation 44/2001 (OJ L012, 16.1.2001, p 1) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters came into force on 1 March 2002 and is implemented by the Civil Jurisdiction and Judgments Order 2001, SI 2001/3929, which makes amendments to the Civil Jurisdiction and Judgments Act 1982. EC Council Regulation 44/2001 (OJ L012, 16.1.2001) applies to all member states except Denmark and to that extent replaces the Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters. The Brussels Convention, in so far as it governs relationships with Denmark, and the Lugano Convention, remain in place. The Brussels Convention is the Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (Brussels, 27 September 1968; EC 46 (1976); Cmnd 7395) (including the Protocol annexed to that Convention); and the Lugano Convention is the Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (Lugano, 16 September 1988, OJ L319, 25.11.88, p 9) (including the Protocols annexed to that Convention). As to the Brussels Convention and the Lugano Convention see CONFLICT OF LAWS vol 8(3) (Reissue) PARA 65 et seq. The Brussels Convention and the Lugano Convention have the force of law in the United Kingdom: see the Civil Jurisdiction and Judgments Act 1982 s 2(1) (amended by the Civil Jurisdiction and Judgments Act 1991 s 3, Sch 2 para 1); the Civil Jurisdiction and Judgments Act 1982 s 3A(1) (added by the Civil Jurisdiction and Judgments Act 1991 s 1(1)); and CONFLICT OF LAWS vol 8(3) (Reissue) PARA 65.

3 See CONFLICT OF LAWS vol 8(3) (Reissue) PARA 66. For these purposes, 'part of the United Kingdom' means England and Wales, Scotland or Northern Ireland: Civil Jurisdiction and Judgments Act 1982 s 50.

4 Ibid s 42(1), (2) (amended by the Civil Jurisdiction and Judgments Act 1991 Sch 2 para 17). As to the rules for determining the seat of a corporation see the Civil Jurisdiction and Judgments Act 1982 s 42(3)-(7); and CONFLICT OF LAWS vol 8(3) (Reissue) PARA 85. As to modifications in certain cases see s 43 (as amended); and CONFLICT OF LAWS vol 8(3) (Reissue) PARA 85.

5 As to residence for the purposes of corporation tax see INCOME TAXATION vol 23(2) (Reissue) PARAS 1262, 1269; and as to the locality of assets for the purposes of inheritance tax see INHERITANCE TAXATION vol 24 (Reissue) PARA 599 et seq.

6 See the Finance Act 1988 s 66(1); and INCOME TAXATION vol 23(2) (Reissue) PARA 1262. For the meaning of 'the Taxes Acts' see INCOME TAXATION vol 23(1) (Reissue) PARA 21; definition applied by the Finance Act 1988 s 66(3). Certain companies may be treated as non-resident under double taxation arrangements: see the Finance Act 1994 s 249 (as amended); and INCOME TAXATION vol 23(2) (Reissue) PARA 1262.

7 *De Beers Consolidated Mines Ltd v Howe* [1906] AC 455, HL; *Unit Construction Co Ltd v Bullock* [1960] AC 351, [1959] 3 All ER 831, HL; and see *Egyptian Delta Land and Investment Co Ltd v Todd* [1929] AC 1, HL; and INCOME TAXATION vol 23(2) (Reissue) PARA 1262.

8 *Swedish Central Rly Co Ltd v Thompson* [1925] AC 495, HL.

9 *Daimler Co Ltd v Continental Tyre and Rubber Co (Great Britain) Ltd* [1916] 2 AC 307, HL; *Sovfracht V/O v Van Udens Scheepvaart en Agentur Maatschappij (NV Gebr)* [1943] AC 203, [1943] 1 All ER 76, HL. See also PARA 1127 note 3 post; and WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) PARA 575.

10 *Re Little Olympian Each Ways Ltd* [1994] 4 All ER 561 at 566, [1995] 1 WLR 560 at 566 per Lindsay J.

UPDATE

1125 Domicile and residence

NOTE 2--The provisions of EC Council Regulation 44/2001 now apply to Denmark: 1982 Act s 1(3) (amended by SI 2007/1655).

NOTE 6--Finance Act 1988 s 66 now Corporation Tax Act 2009 ss 14, 15.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/1. THE NATURE OF CORPORATIONS/(4) DOMICILE, RESIDENCE AND NATIONALITY/1126. Holding of shares in foreign corporation.

1126. Holding of shares in foreign corporation.

The fact that an English corporation holds all the shares in a foreign corporation does not make the business of the foreign corporation the business of the English corporation. Each corporation is a distinct entity, and the former, merely by reason of the shareholding, is neither the trustee nor the agent of the latter¹.

1 *Gramophone and Typewriter Ltd v Stanley* [1906] 2 KB 856 at 872 per Walton J; affd [1908] 2 KB 89, CA. See also *Kodak Ltd v Clark* [1903] 1 KB 505, CA. See, however, *Unit Construction Co Ltd v Bullock* [1960] AC 351, [1959] 3 All ER 831, HL (effective management of a Kenyan subsidiary of an English company conducted by the parent company and not by the local directors of the subsidiary; the subsidiary was held to be resident in the United Kingdom for tax purposes).

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/1. THE NATURE OF CORPORATIONS/(4) DOMICILE, RESIDENCE AND NATIONALITY/1127. Nationality.

1127. Nationality.

In so far as the conception of nationality is applicable to corporations, it depends on the country of incorporation¹. A corporation incorporated under English law has British nationality irrespective of the nationality of its members²; but an English corporation assumes an enemy character in time of war if controlled by persons resident in the enemy country, or adhering to the enemy³. An English corporation remains subject to English law notwithstanding that its business and centre of administration may be abroad⁴ or that it has acquired an enemy character by being subject to enemy control⁵.

1 le in the case of a registered company, the country of registration: see the cases cited in note 2 *infra*. As to the creation of corporations see PARA 1128 *et seq* post.

2 *R v Arnaud* (1846) 9 QB 806; *Janson v Driefontein Consolidated Mines Ltd* [1902] AC 484 at 497, 501, 505, HL; *Continental Tyre and Rubber Co (Great Britain) Ltd v Daimler Co Ltd* [1915] 1 KB 893 at 904, CA, per Lord Reading CJ (on appeal sub nom *Daimler Co Ltd v Continental Tyre and Rubber Co (Great Britain) Ltd* [1916] 2 AC 307 at 349, HL, per Lord Parmoor). See also *Princess Reuss v Bos* (1871) LR 5 HL 176.

3 *Daimler Co Ltd v Continental Tyre and Rubber Co (Great Britain) Ltd* [1916] 2 AC 307 at 345, HL; and see WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) PARA 575.

4 *A-G v Jewish Colonization Association* [1900] 2 QB 556; on appeal [1901] 1 KB 123 at 130, 144, CA.

5 *Kuenigl v Donnersmarck* [1955] 1 QB 515, [1955] 1 All ER 46; and see COMPANIES vol 14 (2009) PARA 122.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/2. CREATION OF CORPORATIONS/(1) IN GENERAL/1128. Methods of creation.

2. CREATION OF CORPORATIONS

(1) IN GENERAL

1128. Methods of creation.

A corporation is created under the law of England and Wales by one or other of two methods:

- 7 (1) by royal charter of incorporation¹ from the Crown; or
- 8 (2) by the authority of Parliament, that is to say by or by virtue of statute².

There are instances in which a royal charter, though having force solely by virtue of the royal prerogative, has in fact been granted with the concurrence of Parliament³. A statute may expressly authorise or make provision for the creation of a corporation by grant of a royal charter⁴.

Not all corporations known to the law have, however, been created by these means. At common law the Sovereign is a corporation sole⁵, as also are parsons and bishops⁶, and certain other ecclesiastical persons, by virtue of office⁷; and Parliament is a corporation aggregate consisting of the Sovereign, the Lords Spiritual and Temporal, and the Commons⁸. Moreover corporations may exist by prescription⁹, a lost charter from the Crown being presumed¹⁰, or by custom¹¹.

A foreign corporation will be recognised by the English courts if it is created by any method established by the law of its place of incorporation¹².

The amalgamation or dissolution of corporations, often associated with the creation of a new uniting or superseding corporation, has been effected in modern times by or by virtue of statute¹³.

1 *Sutton's Hospital Case* (1612) 10 Co Rep 1a, 23a at 29b, Ex Ch; *Tone River Conservators v Ash* (1829) 10 B & C 349. By the phrase 'royal charter of incorporation' is meant any grant made by virtue of the royal prerogative, whether the instrument of grant is called a grant, a warrant or a charter. See, for example, the Charter of Incorporation of the British Broadcasting Corporation, granted on 20 December 1926 by warrant under the sign manual; and for the current charter continuing the Corporation until 31 December 2006 see the Royal Charter for the Continuance of the British Broadcasting Corporation (Cm 3248) (May 1996).

The power to create a corporation by royal charter is subject to the limitation that two corporations cannot be created for the same purposes at the same place and time: *R v Amery* (1790) 2 Bro Parl Cas 336, HL (second

charter void). The same persons may, however, constitute at any one time any number of different corporations having different objects: Grant, Law of Corporations 48.

2 *Sutton's Hospital Case* (1612) 10 Co Rep 1a, 23a at 29b; Ex Ch. As to the different methods of incorporation by statute see PARA 1143 post.

3 See eg *R v Haythorne* (1826) 5 B & C 410; *R v Attwood* (1833) 4 B & Ad 481. See also *Great Eastern Rly Co v Goldsmid* (1884) 9 App Cas 927, HL (charter granted by King and Parliament); and see PARA 1144 text and note 5 post.

4 The London Government Act 1963 provides that the London boroughs established thereunder were to be incorporated either by royal charter (see s 1(2); and LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 30, 35) or by an incorporation order (see s 1(3); and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 35). See also PARA 1133 text and note 4 post. A district council may petition for the grant of a royal charter conferring on its district the status of a borough: see the Local Government Act 1972 s 245 (as amended); and LOCAL GOVERNMENT vol 69 (2009) PARA 25. It appears, however, that the grant of such a charter does not create a new corporation in place of the existing council and that the effect of the grant of such a charter is wholly or largely honorific.

5 See PARA 1112 ante. For the meaning of 'corporation sole' see PARA 1111 ante.

6 *River Tone Conservators v Ash* (1829) 10 B & C 349 at 383 per Littledale J; *Sutton's Hospital Case* (1612) 10 Co Rep 1a, 23a at 29b, Ex Ch.

7 1 Bl Com 460; and see PARA 1112 ante.

8 *River Tone Conservators v Ash* (1829) 10 B & C 349 at 383 per Littledale J; Cowell's Interpreter sv Corporation Temporal. For the meaning of 'corporation aggregate' see PARA 1109 ante.

9 *R v Ilchester Corpn* (1824) 2 B & C 764 (corporation aggregate); *King v Baylay* (1831) 1 B & Ad 761 (corporation sole); *Mirehouse v Rennell* (1833) 1 Cl & Fin 527, HL (prebendary a corporation sole existing by charter of foundation or prescription). The Corporation of the City of London is a corporation by prescription: see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 40.

Prescription is evidence of what was in the charter but does not now appear: *Anon* (1774) Lofft 556 at 558 per Lord Mansfield. As to what amounts to evidence of prescription see *Jenkins v Harvey* (1835) 1 Gale 454 at 457 per Parke B.

Oral evidence is admissible to support a contention that a charter operates to confirm or revive a pre-existing corporation, although the charter is couched in terms appropriate to the creation of a new corporation: see *R v Stratford-upon-Avon Corpn* (1811) 14 East 348.

10 *Re Free Fishermen of Faversham (Company or Fraternity)* (1887) 36 ChD 329, CA (where the corporation had been recognised as such by an Act of Parliament).

11 *Fulwood's Case* (1591) 4 Co Rep 64b; *Byrd v Wilsford* (1596) Cro Eliz 464, Ex Ch (Chamberlain of London).

12 See PARA 1107 ante; and CONFLICT OF LAWS vol 8(3) (Reissue) PARAS 465-466.

13 See eg the Local Government Act 1972, which dissolved all existing local government authorities (except the parish councils of rural parishes in England) in England and Wales other than in Greater London and the Scilly Isles (see ss 1(10), (11), 20(6) (as substituted) and set up new county and district councils having corporate status (see ss 1(1), 2, 20(1), 21 (ss 20(1), 21 as substituted)). See LOCAL GOVERNMENT vol 69 (2009) PARA 24 et seq. See also PARAS 1143, 1145 post. As to the reconstruction and amalgamation of companies regulated by the Companies Act 1985 see PARAS 1239-1240 post; and COMPANIES.

UPDATE

1128 Methods of creation

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 13--Companies Act 1985 replaced for the most part by Companies Act 2006. As to the reconstruction and amalgamation of companies regulated thereby see Companies Act 2006 Pt 26 (ss 895-901); and COMPANIES vol 15 (2009) PARA 1425 et seq.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/2. CREATION OF CORPORATIONS/(1) IN GENERAL/1129. Essentials of incorporation.

1129. Essentials of incorporation.

The constitution of a corporation newly created is usually determined by the statute or charter, or instruments under the statute, by virtue of which the corporation is created¹. In the absence of special statutory restrictions any persons or person have or has capacity to take incorporation², and it is not necessary in law that there should be a head among the incorporators³. Where a corporation aggregate is created, the head and members may be appointed after the creation of the corporation, but the creation of the corporation may and should precede the founding of the institution which it will conduct⁴.

There is authority of long standing for saying that the essence of a corporation consists in:

- 9 (1) lawful authority of incorporation;
- 10 (2) the persons to be incorporated, either as persons natural⁵ or bodies incorporate and politic⁶;
- 11 (3) a name⁷ by which the persons are incorporated;
- 12 (4) a place⁸; and
- 13 (5) words sufficient in law⁹.

A franchise¹⁰ is not essential to the creation of a corporation but is a privilege pertaining to it¹¹.

1 In the case of a corporation created by public general statute the Act itself contains the essentials of the constitution. In the case of companies incorporated under the Companies Act 1985, the memorandum and articles of association determine the constitution in so far as it is not regulated by the Act. As to such companies see COMPANIES vol 14 (2009) PARA 78. For an example of a charter of incorporation which sets out the constitution of the body corporate see PARA 1128 note 1 ante. See further PARAS 1145, 1185 text to note 2 post. In the case of a corporation incorporated by special Act as a joint stock company after 8 May 1845, the constitution is determined by the special Act, the Companies Clauses Consolidation Acts 1845 and 1888 (the provisions of which apply so far as not varied or excluded by the special Act) and such provisions of the Companies Clauses Act 1863 and the Companies Clauses Act 1869 as may be applicable: see the Companies Clauses Consolidation Act 1845 s 1; the Companies Clauses Act 1863 ss 3, 12, 22, 36; the Companies Clauses Act 1869 s 3; the Companies Clauses Consolidation Act 1888 s 1; and COMPANIES vol 15 (2009) PARA 1667 et seq.

2 *Sutton's Hospital Case* (1612) 10 Co Rep 1a, 23a at 29b, Ex Ch.

3 *Sutton's Hospital Case* (1612) 10 Co Rep 1a, 23a at 30b, Ex Ch; and see PARA 1110 text and note 1 ante.

4 *Sutton's Hospital Case* (1612) 10 Co Rep 1a, 23a at 27b, Ex Ch. For the meaning of 'corporation aggregate' see PARA 1109 ante.

5 An incorporation by royal charter is not effective until accepted by the persons to be incorporated: see PARAS 1134-1135 post.

6 A body corporate can have other bodies corporate as members, eg a dean and chapter is a body corporate, but the dean is also a corporation by himself and so is each prebendary; similarly a canon may be a member of a dean and chapter, but also a corporation sole: *Sutton's Hospital Case* (1612) 10 Co Rep 1a, 23a at 29b, Ex Ch; *Ford v Harington* (1869) LR 5 CP 282. For the meaning of 'corporation sole' see PARA 1111 ante.

As to corporate bodies being members of companies under the Companies Act 1985 see COMPANIES. A body corporate cannot, subject to limited exceptions, be a member of its holding company: see s 23 (as substituted and amended). As to bodies corporate being members of other corporations see PARAS 1147 note 3, 1239 text and note 2 post.

7 See PARA 1116 et seq ante.

8 This requirement is now generally obsolete: see PARA 1127 ante.

9 *Sutton's Hospital Case* (1612) 10 Co Rep 1a, Ex Ch. No special form of words is essential: see *Sutton's Hospital Case* supra; and PARAS 1131 note 2, 1144 text and note 1 post.

10 A franchise or liberty is a royal privilege, a branch of the royal prerogative subsisting in the hands of a subject: 2 BI Com 37. See also CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 879.

11 *R v London Corp'n* (1692) Skin 310.

UPDATE

1129 Essentials of incorporation

NOTES 1, 6--Companies Act 1985 replaced for the most part by Companies Act 2006.

NOTE 6--As to corporate bodies being members of companies under the Companies Act 2006 see COMPANIES vol 14 (2009) PARA 321. Companies Act 1985 s 23 replaced by Companies Act 2006 ss 136-138, 141-144: see COMPANIES vol 14 (2009) PARA 334.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/2. CREATION OF CORPORATIONS/(2) CREATION BY CHARTER/(i) Grant of Charters/1130. Right of Crown.

(2) CREATION BY CHARTER

(i) Grant of Charters

1130. Right of Crown.

The Sovereign has, at common law, power to incorporate by charter any number of persons assenting to be incorporated¹. Formerly the Pope², as well as the Crown, could create corporations by grant, and such corporations were called spiritual corporations of persons dead in law, as, for example, an abbot and convent³; but now only the Crown may create a corporation by grant, and no other person may prescribe to do it⁴.

Although a subject cannot create a corporation, the Crown may delegate to a private person the right of declaring of what members a corporation shall consist, their qualification, and in what manner the corporation shall be kept up⁵. Whether this is done by the Crown at the time of the actual creation of the corporation, or is the subject of a subsequent separate declaration, it is equally the act of the Crown⁶. A subject so empowered must act strictly in accordance with the royal grant, otherwise the body so constituted will not be a corporation in reality, but only in reputation⁷.

1 Bro Abr, Corporation and Capacities, pl 15; 1 BI Com 461; *Sutton's Hospital Case* (1612) 10 Co Rep 1a, 23a at 31a, 33b, Ex Ch; *Elve v Boyton* [1891] 1 Ch 501 at 507, CA.

2 See YB 14 Hen 8, 3.

3 Cowell's Interpreter sv Corporation Spiritual.

4 *R v Lord Dacres* (1553) Jenk 205; *Sutton's Hospital Case* (1612) 10 Co Rep 1a, 23a at 33b, Ex Ch. The King might create a corporation within the county palatine of Lancaster (as distinguished from the duchy) under the duchy seal as well as under the Great Seal of England, because as Duke of Lancaster he has jura regalia: *Astill v Clarke* (1698) 2 Lut 1233 at 1237, cited by Buller J in *R v Amery* (1787) 1 Term Rep 575 at 586. As to the duchy and county palatine of Lancaster see CROWN PROPERTY vol 12(1) (Reissue) PARA 300 et seq. The master of

Pembroke College, Oxford, is one of the few instances of the creation of a corporation sole by royal letters patent (Grant, Law of Corporations 626); the letters patent were afterwards confirmed by the Mortuaries (Bangor, &c) Abolition Act 1713 s 7 (repealed). For the meaning of 'corporation sole' see PARA 1111 ante. A prebend may have its origin by charter or prescription: *Mirehouse v Rennell* (1833) 1 Cl & Fin 527 at 538, HL. Prescription presumes the sometime existence of a charter which has been lost: see PARA 1128 ante.

5 1 Bl Com 462; Bro Abr, Prerogative, pl 53. Thus the Chancellor of the University of Oxford has power by charter to create corporations: 1 Bl Com 462.

6 *R v Dulwich College* (1851) 17 QB 600 at 625 per Patteson J.

7 *Landewibrevye College Case* (1568) Jenk 233.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/2. CREATION OF CORPORATIONS/(2) CREATION BY CHARTER/(i) Grant of Charters/1131. When incorporation implied.

1131. When incorporation implied.

No particular words are necessary in the creation of a corporation¹; any expression showing an intention to incorporate will be sufficient².

The fact that corporators are empowered to take and hold land by succession as distinguished from inheritance is evidence that they take as a corporation, and not as individuals³. Thus when the Crown grants land to certain persons and their successors, it is implied from the word 'successors' in this connection that the Crown intended them to take as a corporation⁴.

1 See PARA 1129 note 9 ante.

2 Formerly the inhabitants of a town were incorporated if the Crown granted them a guild; where the Crown gave a licence to a town to grant rent to a particular individual, this constituted incorporation; if the Crown granted to the men of a town a discharge from a toll, this was, to that extent, a good incorporation; but, if the Crown granted land to them and their successors and they were not already incorporated, the grant was void, for the Crown was deceived: see 1 Roll Abr 513. Where the Crown granted land by charter to the men of a certain place without saying to have to them, their heirs and successors, but reserving a rent, it was held to be a good perpetual corporation for the particular purpose but no further; and, on the release of the rent by the Crown, would be thereupon dissolved: *Anon* (1554) Dyer 100a. If, however, there had been no reservation of rent, there would have been no incorporation: 1 Roll Abr 513. As to royal grants see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 849 et seq.

3 *River Tone Conservators v Ash* (1829) 10 B & C 349 at 376; *Bower v Griffith* (1868) 16 WR 540.

4 *River Tone Conservators v Ash* (1829) 10 B & C 349 at 386 per Little Dale J.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/2. CREATION OF CORPORATIONS/(2) CREATION BY CHARTER/(i) Grant of Charters/1132. Creation for limited period.

1132. Creation for limited period.

It is lawful¹ for the Crown in any charter of incorporation to limit its duration to any term or number of years, or for any other period whatsoever², and by charter or by warrant or other writing under the sign manual from time to time to extend or renew conditionally or unconditionally any term or number of years or other period for which any charter of

incorporation granted by the Crown or any privileges of such charter may for the time being be limited to endure³.

In granting a charter to a corporation, the Crown cannot limit or fetter the exercise of the prerogative which is vested in it for the public good, or dispense with anything in which the subject has an interest, or make a grant in violation of the common law⁴.

1 It appears to have been thought that at common law the Crown could not create a corporation for a definite period, but this view was not always acted upon. The first charter of the East India Company was granted for a period of 15 years, and under condition that, if not found to be advantageous to the country, it might be annulled on notice, and the charter provided that it might be renewed: 1 Mill's History of British India (4th Edn) 24, 25. As to the limit of William III's charter of 1693 to the same company see 1 Mill's History of British India (4th Edn) 132.

2 Thus the British Broadcasting Corporation was incorporated by charter for a period of ten years from 1 January 1927, and the incorporation was subsequently continued by further charters; for the current charter continuing the corporation until 31 December 2006 see the Royal Charter for the Continuance of the British Broadcasting Corporation (Cm 3248) (May 1996).

3 Notwithstanding the repeal of the Chartered Companies Act 1837 and the Chartered Companies Act 1884 by the Statute Law (Repeals) Act 1993 s 1(1), Sch 1 Pt V, the power of Her Majesty to grant a charter of incorporation of limited duration or to extend or renew such a charter or privileges of such a charter is not affected: see s 20, Sch 2 para 11; and COMPANIES vol 14 (2009) PARA 3; COMPANIES vol 15 (2009) PARA 1665.

4 *Eastern Archipelago Co v R* (1853) 2 E & B 856 at 884, Ex Ch, per Platt B; *Lowe's Case* (1609) 9 Co Rep 123.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/2. CREATION OF CORPORATIONS/(2) CREATION BY CHARTER/(i) Grant of Charters/1133. Privileges and liabilities.

1133. Privileges and liabilities.

The Crown cannot, under its prerogative, incorporate persons so as to make them personally liable to an unlimited extent for the debts of the corporation¹.

Grants by the Crown to subjects of an exclusive right to sell, buy, make, work or use anything within the realm, are in general void². Incorporation of a body by royal charter does not confer Crown immunity on the corporation or exempt it from the common law or statutory restrictions on restraint of trade³.

The Crown has on several occasions been empowered by a special statute to grant a charter which it could not have granted under its prerogative powers⁴.

1 *Elve v Boyton* [1891] 1 Ch 501 at 507, CA.

2 *Case of Monopolies* (1602) 11 Co Rep 84b; Statute of Monopolies 1623 s 1; *Nightingale v Bridges* (1689) 1 Show 135; Bac Abr, Monopoly, A; 3 Co Inst 182, 183; Com Dig, Trade, D4; and see *British Broadcasting Corp v Johns* [1965] Ch 32 at 79, [1964] 1 All ER 923 at 941-942, CA, per Diplock LJ. As to Crown grants see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 849 et seq. Cf *East India Co v Sandys, Case of Monopolies* (1685) 10 State Tr 371 (grant of exclusive privilege of trading to the East Indies upheld). See also PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 302.

3 *Re Royal Institution of Chartered Surveyors' Application, Royal Institution of Chartered Surveyors v Director General of Fair Trading* [1986] ICR 550, CA (where the RICS was held to be bound by the Restrictive Trade Practices Act 1976, which does not bind the Crown; the description of the RICS at 561 as a corporation sole is a mistake).

4 *Elve v Boyton* [1891] 1 Ch 501 at 507, CA. Under 6 Geo 1 c 18 (Royal Exchange and London Assurance Corporation) (1719) (repealed), referred to in *Elve v Boyton* supra, royal charters of incorporation were granted in 1720 and in 1721. Under 9 Will 3 c 44 (East India Company) (1698) (repealed) a royal charter of incorporation was granted to the East India Company. Under the Bank of England Act 1694 a royal charter of incorporation was granted to the Bank of England, and under the Bank Act 1892 s 7(1) (repealed) a supplementary charter was granted. Under the Bank of England Act 1946 s 3(3) the existing charters were, with some exceptions, revoked and a new charter granted: see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 793. The South Sea Company was incorporated by a royal charter, granted under the powers specially conferred for the purpose by 9 Anne c 15 (public debts etc) (1710) (repealed).

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/2. CREATION OF CORPORATIONS/(2) CREATION BY CHARTER/(ii) Acceptance and Amendment of Charters/1134. What constitutes acceptance.

(ii) Acceptance and Amendment of Charters

1134. What constitutes acceptance.

A charter of incorporation is of no effect until it is accepted by those to whom it is granted¹. In the absence of any authoritative method of acceptance being stated, acceptance is a question of fact to be determined by the evidence in each particular case². As a general rule the acceptance of a charter, whether original or otherwise, is proved by evidence of acts done under it³.

Where the majority of the grantees of a charter accept it, the refusal of the minority to accept will be of no avail against the will of the majority⁴.

1 *R v Hughes* (1828) 7 B & C 708 at 718 per Lord Tenterden CJ; *Rutter v Chapman* (1841) 8 M & W 1 at 117, Ex Ch, per Lord Denman CJ.

2 *R v Hughes* (1828) 7 B & C 708.

3 *R v Hughes* (1828) 7 B & C 708 at 718 per Lord Tenterden CJ.

4 *R v Pasmore* (1789) 3 Term Rep 199 at 242 per Lord Kenyon CJ; cf *Hamond v Jethro* (1611) 2 Brownl 97 at 100.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/2. CREATION OF CORPORATIONS/(2) CREATION BY CHARTER/(ii) Acceptance and Amendment of Charters/1135. Acceptance by members of a class.

1135. Acceptance by members of a class.

A charter granted to certain persons by name and all others of a certain class does not instantly incorporate the named persons and all the members of the class, but only such of them as assent to the charter¹. Although a charter of incorporation granted by the Crown affecting a certain class of persons, as, for example, persons engaged in a particular trade, cannot be binding on every person belonging to that class in the kingdom, it may be binding on all those who accept it and become members of the body so constituted²; and where a charter of incorporation is addressed to a class of persons indefinite in number, it is not necessary, in order to prove acceptance of the charter, to show that it has been accepted by a majority of the persons belonging to that class³.

- 1 *R v Askew* (1768) 4 Burr 2186 at 2199.
- 2 *London Tobacco Pipe Makers' Co v Woodroffe* (1828) 7 B & C 838.
- 3 *R v Amery* (1787) 1 Term Rep 575 at 587 per Buller J.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/2. CREATION OF CORPORATIONS/(2) CREATION BY CHARTER/(ii) Acceptance and Amendment of Charters/1136. Part acceptance.

1136. Part acceptance.

A charter of incorporation cannot be accepted in part and rejected in part¹; it must be accepted as a whole or not at all², unless there is an intention on the part of the Crown that the body to whom the charter is given should have liberty and power to accept it in part and reject it in part³. A charter cannot be accepted for a period of time⁴; once accepted, it is conclusive for ever and cannot be impeached by the corporation⁵.

- 1 *R v Westwood* (1830) 4 Bli NS 213, HL; but see PARA 1140 text to notes 6, 7 post.
- 2 *R v Amery* (1787) 1 Term Rep 575 at 589 per Buller J; *Lyme Regis Corp v Henley* (1834) 1 Bing NC 222 at 236, HL, per Park J.
- 3 *R v Westwood* (1830) 4 Bli NS 213, HL.
- 4 *R v Amery* (1787) 1 Term Rep 575 at 587.
- 5 *R v Amery* (1787) 1 Term Rep 575 at 587. As to surrender and forfeiture see PARAS 1295-1296 post.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/2. CREATION OF CORPORATIONS/(2) CREATION BY CHARTER/(ii) Acceptance and Amendment of Charters/1137. Charter amendment.

1137. Charter amendment.

The charter may contain provisions governing how the corporation may amend the charter, subject always to the approval of the Sovereign in Council. For example, it may contain power for the corporation to amend the charter by a special resolution passed at a general meeting, subject to the Sovereign's approval of the amendment¹. A charter may also provide that the corporation may at any time apply for and accept a supplemental charter; such application takes the form of a petition to the Sovereign in Council².

- 1 See *Knowles v Zoological Society of London* [1959] 2 All ER 595, [1959] 1 WLR 823, CA.
- 2 See CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 526.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/2. CREATION OF CORPORATIONS/(2) CREATION BY CHARTER/(iii) Interpretation of Charters/1138. Rules of construction.

(iii) Interpretation of Charters

1138. Rules of construction.

In the interpretation of royal charters it is a rule of construction that a grant made by the Crown at the suit of a subject is to be taken most beneficially for the Crown and against the subject; in other words, that the subject has no right to claim under a grant or charter anything which the Crown has not granted by express, clear and unambiguous terms¹. A negative cannot be implied from a positive clause in a charter except where no other construction is possible². Where by a construction against the grantee nothing would pass, a charter is construed liberally in his favour, because it is not consistent with the honour of the Crown to suppose a grant with the intention of passing nothing³.

Words of permission may be interpreted as imperative if they confer a power to be exercised for the public benefit⁴.

Where words in a charter are apparently in restraint of trade, the courts will construe them as much as possible in favour of the freedom of commerce⁵.

1 *Eastern Archipelago Co v R* (1853) 2 E & B 856 at 906-907, Ex Ch, per Pollock CB. As to the construction of royal grants generally see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 858 et seq.

2 *Eastern Archipelago Co v R* (1853) 2 E & B 856, Ex Ch. In this case Pollock CB was of opinion that the rule here stated had the effect of excluding the application of the maxims 'expressum facit cessare tacitum' (an express provision excludes any provision which might otherwise be implied about the same subject matter) and 'expressio unius est exclusio alterius' (the express mention of one thing is the exclusion of the other). As to these maxims see DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARAS 182-183. Where, by charter, the Crown granted to a corporation 'all fines for trespasses and other offences whatsoever, and also fines for licence to agree, and all amercements, ransoms and forfeited issues, forfeitures year day waste and estrepement' and, by a subsequent charter, the Crown granted to the same corporation 'all issues, fines and amercements from whatsoever pledges and mainpernors' of persons dwelling in the borough, the corporation was not, on the construction of the charters, entitled as against the Crown to take a forfeited recognisance or bail bond entered into for the appearance of a prisoner at the next court of assize for the county: *Re Nottingham Corpn* [1897] 2 QB 502.

3 *Eastern Archipelago Co v R* (1853) 2 E & B 856 at 914, Ex Ch, per Jervis CJ.

4 *R v Hastings Corpn* (1822) 1 Dow & Ry KB 148.

5 *Berwick-upon-Tweed Corpn v Johnson* (1773) Lofft 334 (where the charter had been confirmed by Act of Parliament).

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/2. CREATION OF CORPORATIONS/(2) CREATION BY CHARTER/(iii) Interpretation of Charters/1139. Evidence of usage.

1139. Evidence of usage.

Although of no avail against the express words of a charter¹, evidence of ancient usage will be admissible to control the true construction of it where it is doubtful or obscure². Similarly, evidence of long usage may be admitted to explain an ambiguous charter³, and such evidence will be treated by the courts as of great weight⁴. No usage can control a charter of modern date⁵.

Again, the construction to be put on an ambiguous word in a charter may be materially influenced by the sense in which it is used in earlier charters⁶.

1 *R v Salway* (1829) 9 B & C 424 at 435 per Lord Tenterden CJ.

2 *Blankley v Winstanley* (1789) 3 Term Rep 279; *R v Osbourne* (1803) 4 East 327; *Bailiffs etc of Tewkesbury v Bricknell* (1809) 2 Taunt 120. Usage is 'a collection through a great period of time of the regulations by which' a community 'has from time to time agreed to put a construction on the instrument' of their constitution: *A-G v Newcombe* (1807) 14 Ves 1 at 8 per Lord Eldon. See also *R v Rye Corpn* (1828) 7 LJOSKB 107 ('every freeman's son' construed by usage as meaning 'one son of every freeman' and not 'every son of a freeman').

3 *Master, Pilots and Seamen of Newcastle-upon-Tyne v Bradley* (1852) 2 E & B 428n (where in 1851 a charter of 1687 was treated as an ancient charter).

4 *R v Varlo* (1775) 1 Cowp 248 at 250.

5 *R v Grosvenor* (1734) 7 Mod Rep 198 (where the charter in question was granted in 1664). The words 'ancient usage and custom' need not necessarily import immemorial usage or custom; but, as a general rule, such words mean usage and custom of such considerable antiquity that the time during which it has prevailed may be evidence of its being reasonable: *R v Sheriffs of York* (1832) 3 B & Ad 770 at 777 per Lord Tenterden CJ. As to custom generally see CUSTOM AND USAGE vol 12(1) (Reissue) PARA 601 et seq.

6 *R v Grout* (1830) 1 B & Ad 104 at 111 per Bayley J.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/2. CREATION OF CORPORATIONS/(2) CREATION BY CHARTER/(iv) New Charters/1140. Application, grant and acceptance.

(iv) New Charters

1140. Application, grant and acceptance.

A corporation created by charter may apply to the Crown for a new charter¹; and the new charter will be valid, even if it alters the terms of the original charter, unless the latter has been confirmed by statute². It is necessary for the corporation to accept the new charter³; and the acceptance must be made by a majority of the existing corporation⁴. Where a corporation is by loss of members incapable of acting for itself and the Crown revives it by the grant of a new charter, the majority required for acceptance is a majority of members named in the new charter⁵.

It seems that it is not necessary for a corporation already existing⁶ to accept a new charter as a whole; it may accept the charter in part only, and may continue to act in part under its old charter or prescription⁷. It is not now the practice to enrol surrenders of charters.

1 *Ware v Grand Junction Water Co* (1831) 2 Russ & M 470 at 484 per Lord Brougham LC.

2 *R v Miller* (1795) 6 Term Rep 268 at 277. For an example of a statutory confirmation of a charter see 14 & 15 Hen 8 c 5 (Physicians) (1523). See also PARAS 1144 text and note 5, 1145 post.

3 *R v Pasmore* (1789) 3 Term Rep 199; *R v Vice-Chancellor of Cambridge* (1765) 3 Burr 1647 at 1657 per Lord Mansfield CJ; *R v Osbourne* (1803) 4 East 327.

4 See the cases cited in note 3 supra; *Gray and Cathcart v Provost, Fellows, and Scholars of Trinity College, Dublin* [1910] 1 IR 370.

5 See the judgments in *R v Pasmore* (1789) 3 Term Rep 199. See also *R v Hughes* (1828) 7 B & C 708.

6 As to the necessity of acceptance in full in the case of a newly created corporation see PARAS 1134, 1136 ante.

7 *R v Vice-Chancellor of Cambridge* (1765) 3 Burr 1647 at 1656, 1661 per Lord Mansfield CJ and at 1663 per Yates J; but see *R v Routledge* (1780) 2 Doug KB 531 at 535 per Buller J, who inclined to the view that the charter must be accepted as a whole, if at all.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/2. CREATION OF CORPORATIONS/(2) CREATION BY CHARTER/(iv) New Charters/1141. Effect of new charter.

1141. Effect of new charter.

When a corporation takes a new charter concerning liberties, it may be used as a grant or confirmation¹; and a charter may be none the less confirmatory although it is expressed in terms more appropriate to the creation of a new corporation than the confirmation or revival of an old one².

The fact that a corporation takes a new name by grant from the Crown will not destroy rights already existing³, and, although the new charter grants new rights, the former rights, privileges or franchises of the corporation are not thereby destroyed, and the corporation may use and enjoy them, as it did before⁴; similarly its ancient powers and privileges will not be thereby abrogated, merged or extinguished except by the express words of the new charter⁵.

Where a later charter is inconsistent with a former charter or ancient usage, both cannot stand and the later charter must prevail; but, if it is not inconsistent, it will not necessarily abrogate the ancient constitution, and the latter will stand, either totally or partially, as the case may be⁶.

1 *R v Larwood* (1694) 1 Ld Raym 29 at 32.

2 *R v Stratford-upon-Avon Corp* (1811) 14 East 348. The words 'concessimus' or 'damus et concedimus' may signify confirmation of an existing corporation as well as the creation of a new one: *Hall v Greene* (1590) cited Sav 133.

3 *Weld v Wiggett* (1674) Freem KB 320; *R v Vice-Chancellor of Cambridge* (1765) 3 Burr 1647 at 1661 per Lord Mansfield CJ.

4 *Colchester Corp v Seaber* (1766) 3 Burr 1866 at 1874.

5 *Haddock's Case* (1681) T Raym 435 at 439; *R v Vice-Chancellor of Cambridge* (1765) 3 Burr 1647. Thus where a corporation by prescription accepts a charter expressly limiting the corporators to a number less than had previously existed by the custom, it is bound by the restriction placed on its numbers by the new charter: *Page v R* (1792) 2 Ridg Parl Rep 445 at 502, HL.

6 *R v Abell* (1823) 3 Dow & Ry KB 390; and see *R v Philips* (1720) 1 Stra 394.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/2. CREATION OF CORPORATIONS/(2) CREATION BY CHARTER/(v) Governing Law/1142. Law governing chartered companies.

(v) Governing Law

1142. Law governing chartered companies.

Formerly traders took advantage of the power of the Crown to create corporations by charter, in preference to applying for a statute of incorporation, and obtained, like other corporations

aggregate¹, a corporate name, the right of suing and being sued in that name, perpetual succession, the power to hold property, and a common seal.

Since the Companies Acts have been in operation, the vast majority of trading corporations have been formed under them, but there is a certain number of chartered companies in existence². A fundamental difference between a chartered company and a company incorporated by or under Act of Parliament is that the former may, in general, do anything an ordinary person may do, whereas the latter has only such rights and powers as are conferred by its constitution³.

Subject to certain restrictions and conditions, a chartered company which has two or more members may register as a company under the Companies Act 1985⁴. The application of that Act to unregistered companies is restricted⁵. Specific provisions of the Act⁶ are, however, applied to such companies⁷ with some limitations⁸; and any enactment, charter or other instrument constituting or regulating the company affected is not repealed, but is suspended in so far as it is inconsistent with the provisions applied⁹. Moreover, a chartered company may be wound up by the court, in accordance with the provisions of the Insolvency Act 1986, as an unregistered company¹⁰.

Except in the above cases, the chartered companies now in existence are for the most part governed by the general law applicable to corporations aggregate which are constituted by royal charter¹¹.

1 For the meaning of 'corporation aggregate' see PARA 1109 ante.

2 Eg the Bank of England (1694); and the Peninsular and Oriental Steam Navigation Company (1840). As to the Companies Acts see COMPANIES vol 14 (2009) PARA 9 et seq.

3 See PARAS 1230-1231 post; and COMPANIES vol 14 (2009) PARA 252.

4 See the Companies Act 1985 s 680(1) (as amended). A company is not prevented from registering as a private company limited by shares or by guarantee solely because it has only one member: s 680(1A) (added by the Companies (Single Member Private Limited Companies) Regulations 1992, SI 1992/1699, reg 2(b), Schedule para 7). The following companies may not register under the Companies Act 1985 s 680 (as amended):

- 1 (1) a company registered in any part of the United Kingdom under the Companies Act 1862, the Companies (Consolidation) Act 1908, the Companies Act 1929 or the Companies Act 1948 (Companies Act 1985 s 680(2));
- 2 (2) a company having the liability of its members limited by Act of Parliament or letters patent, and not being a joint stock company (s 680(3)).

A company having the liability of its members limited by Act of Parliament or letters patent may not register under s 680 (as amended) as an unlimited company or as a company limited by guarantee: s 680(4). A company that is not a joint stock company may not register under s 680 (as amended) as a company limited by shares: s 680(5). As to the procedural requirements for registration see s 681.

5 See the definitions of 'company' and 'existing company' for the purposes of the Companies Act 1985 in s 735(1).

6 The provisions are listed in *ibid* Sch 22 (as amended).

7 Ie to all bodies corporate incorporated in and having a principal place of business in Great Britain, other than: (1) any body incorporated by or registered under any public general Act of Parliament; (2) any body not formed for the purpose of carrying on a business which has for its object the acquisition of gain by the body or its individual members; (3) any body for the time being exempted by direction of the Secretary of State (or before him by the Board of Trade); (4) any open-ended investment company: *ibid* s 781(1), (2) (amended by the Open-Ended Investment Companies Regulations 2001, SI 2001/1228, reg 84, Sch 7 Pt I para 8).

8 See the Companies Act 1985 s 718, Sch 22 (both as amended).

9 See *ibid* s 718(5). This provision does not restrict the power of the Sovereign to grant a charter in lieu or supplementary to any existing charter: see s 718(5).

10 See PARA 1302 post.

11 As to the use of seals of trading corporations see PARA 1123 ante; and as to the general powers of a chartered company see PARAS 1223, 1230 post.

UPDATE

1142 Law governing chartered companies

NOTE 4--Companies Act 1985 s 680 replaced by Companies Act 2006 s 1040: see COMPANIES vol 14 (2009) PARA 33. Companies Act 1985 s 681 repealed: Companies Act 2006 Sch 16.

NOTE 5--Definitions in Companies Act 1985 s 735(1) replaced by those in Companies Act 2006 s 1: see COMPANIES vol 14 (2009) PARA 32.

NOTES 6-9--Companies Act 1985 s 718 replaced by Companies Act 2006 s 743: see COMPANIES vol 15 (2009) PARA 1321. Companies Act 1985 Sch 22 repealed: Companies Act 2006 Sch 16.

NOTE 6--As to application of Companies Act provisions to unregistered companies see COMPANIES vol 15 (2009) PARA 1666.

NOTE 7--Reference to Companies Act 1985 s 781 should be to s 718.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/2. CREATION OF CORPORATIONS/(3) CREATION BY STATUTE/1143. Methods of incorporation by statute.

(3) CREATION BY STATUTE

1143. Methods of incorporation by statute.

Corporations created by authority of Parliament may be divided into four classes:

- 14 (1) corporations directly created by public general Act of Parliament;
- 15 (2) corporations created by registration under public general Acts of Parliament authorising the members of a proposed corporation to apply for its incorporation;
- 16 (3) corporations created by special, namely local or personal, Act of Parliament; and
- 17 (4) corporations created under authority delegated by Act of Parliament¹.

¹ See further PARA 1145 post.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/2. CREATION OF CORPORATIONS/(3) CREATION BY STATUTE/1144. Intention to incorporate sufficient.

1144. Intention to incorporate sufficient.

To constitute creation it is not necessary that any particular form of words should be used in the statute; it is sufficient if the intent to incorporate is evident¹. Where by an ancient statute a body of persons is empowered to sue and be sued by a special name, it is strong evidence that

they constitute a corporation². Where a number of persons are so constituted by Act of Parliament that they have perpetual succession, are to continue for all time, may take land, make contracts which shall be binding not on themselves but on the persons filling office, and are authorised to sue or be sued in the name of their treasurer, they are in the nature of a corporation aggregate at least for the purposes of the Act³. Trustees appointed by an Act of Parliament for dividing and inclosing a common have been held to have been created a corporation by implication⁴.

A charter in which the Crown is expressed to grant with the assent of the Lords and Commons in Parliament assembled has the effect of a statute⁵.

1 *River Tone Conservators v Ash* (1829) 10 B & C 349 at 384 per Littledale J.

2 *River Tone Conservators v Ash* (1829) 10 B & C 349. It may be expected that a modern statute by which it is intended to create a corporation will do so in express terms, and the absence of express words of incorporation in the Air Force (Constitution) Act 1917 led Atkin LJ to express the opinion that the Air Council established by s 8 (repealed) was not a corporation, although it was given power by s 10(1) (repealed) as originally enacted to sue and be sued by that name: *Mackenzie-Kennedy v Air Council* [1927] 2 KB 517 at 533-534, CA. See also *IRC v Bew Estates Ltd* [1956] Ch 407, [1956] 2 All ER 210, where it was held that the War Damage Commission (see PARA 1102 note 8 ante) was a quasi corporation.

3 *Jefferys v Gurr* (1831) 2 B & Ad 833. For the meaning of 'corporation aggregate' see PARA 1109 ante.

4 *Ex p Newport Marsh Trustees* (1848) 16 Sim 346. An Act confirming a provisional order fixing the maximum tolls to be charged by the proprietors of a canal, the original canal company having been wound up, does not by implication create a new corporation: *Re Woking UDC (Basingstoke Canal) Act 1911* [1914] 1 Ch 300 at 320, CA, per Phillimore LJ.

5 *Re Islington Market Bill* (1835) 3 Cl & Fin 513, HL. Where, in reply to a petition of the House of Commons, the Crown agreed to ratify a charter of incorporation under the Great Seal, and this was shortly afterwards done by charter, it was held to be not equivalent to confirmation by Act of Parliament, and the Crown might thereafter vary the constitution of the corporation without the concurrence of Parliament: *R v Haythorne* (1826) 5 B & C 410. A charter granted 'in Parliament' or with the consent of the Lords Spiritual and Temporal is not equivalent to a charter confirmed or authorised by Act of Parliament: *R v Attwood* (1833) 1 Nev & MKB 286 at 302.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/2. CREATION OF CORPORATIONS/(3) CREATION BY STATUTE/1145. Creation and constitution of a corporation incorporated by Act of Parliament.

1145. Creation and constitution of a corporation incorporated by Act of Parliament.

Corporations have been created by public general Act of Parliament to perform a wide variety of functions of a public nature. Such corporations include local government authorities¹, the corporations which control the public services and industries², bodies performing various general administrative and advisory functions³, and certain bodies performing special functions of a public nature⁴.

The most important of the statutes which permit duly qualified applicants for corporate status to obtain incorporation by registration is the Companies Act 1985⁵. Other statutes apply to the incorporation of building societies⁶, industrial and provident societies⁷, and friendly societies⁸.

Incorporation by special Act of Parliament was formerly much used, particularly for the incorporation of railway and canal companies and other companies providing services of a quasi-public nature. A number of such companies are still in existence⁹ but this method of incorporation is now rarely used¹⁰. Certain clauses are, by statute, deemed to be applicable to any corporation incorporated as a joint stock company by special Act since 8 May 1845, save in so far as expressly varied or excepted by the special Act¹¹.

Creation of corporations by delegated authority is relatively unusual¹².

When a corporation has been incorporated by an Act of Parliament, the Act becomes the charter of the corporation, declaring its rights and powers and prescribing its duties and obligations¹³. The constitution of a corporation created by the authority of Parliament, or by royal charter having the effect of an Act of Parliament, may be revoked only by an Act of Parliament¹⁴. Where the constitution of a corporation is determined by an Act of Parliament, it cannot be altered afterwards by royal charter¹⁵. A trading corporation incorporated by Act of Parliament has an incidental power to apply to Parliament for authority to extend or vary the powers which it already possesses¹⁶.

1 See the Local Government Act 1972 s 2 (as amended), s 21 (as substituted); and LOCAL GOVERNMENT vol 69 (2009) PARAS 24, 37.

2 Eg the Civil Aviation Authority, incorporated by the Civil Aviation Act 1971 s 1(1) (repealed) and continued in being by the Civil Aviation Act 1982 s 2(1): see AIR LAW vol 2 (2008) PARA 50.

3 Eg the Pensions Regulator, incorporated by the Pensions Act 2004 s 1(1): see SOCIAL SECURITY AND PENSIONS.

4 Eg the British Library Board, incorporated by the British Library Act 1972 s 2(4), Schedule para 1: see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 908.

5 See the Companies Act 1985 ss 1, 13 (both as amended). For other statutes permitting application for corporate status see the text and notes 6-8 infra; and the Charities Act 1993 Pt VII (ss 50-62) (see CHARITIES vol 8 (2010) PARA 260).

6 See the Building Societies Act 1986 s 5, Sch 2 (both as amended); and FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 1865.

7 See the Industrial and Provident Societies Act 1965 ss 1-3 (as amended); and FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 2416.

8 See the Friendly Societies Act 1992 s 6; and FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 2110 et seq.

9 Eg the Mersey Docks and Harbour Company, incorporated as the Mersey Docks and Harbour Board by the Mersey Docks and Harbour Act 1857, and reconstituted as a company by the Mersey Docks and Harbour Act 1971, subject now to the Mersey Docks and Harbour Acts and Orders 1857 to 1992 (see the Mersey Docks and Harbour Act 1992 s 1).

10 An example of incorporation by private Act of Parliament is the Chichester Harbour Conservancy Act 1971. A private Act of Parliament may sometimes be obtained to facilitate the merger of existing corporations by constituting one corporation the 'universal successor' (ie successor to the liabilities as well as the assets) of one or more other corporations: see eg the National Westminster Bank Act 1969, passed in connection with the merger of the National Provincial Bank Ltd and the Westminster Bank Ltd into the National Westminster Bank Ltd (which had itself been incorporated under the Companies Act 1948). See also the University of Manchester Act 2004, incorporating the University of Manchester by merging the Victoria University of Manchester and the University of Manchester Institute of Science and Technology. As to the classification of statutes into public general, local and personal Acts see STATUTES vol 44(1) (Reissue) PARA 1207 et seq.

11 See PARA 1129 note 1 ante.

12 For examples of corporations so created see the Local Government Act 1972 ss 28, 33 (both as substituted) (community councils in Wales to be established by the appropriate principal council: see LOCAL GOVERNMENT vol 69 (2009) PARAS 42, 45); and the Town and Country Planning Act 1990 s 2 (as amended) (joint planning boards constituted by the Secretary of State: see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 30).

13 See *Caledonian and Dumbartonshire Junction Rly Co v Helensburgh Magistrates* (1856) 2 Macq 391 at 405, HL; cited with approval in *Mann v Edinburgh Northern Tramways Co* [1893] AC 69 at 79, 80, HL, per Lord Herschell LC.

14 *Re Islington Market Bill* (1835) 3 Cl & Fin 513, HL; and see PARA 1298 post.

15 *R v Miller* (1795) 6 Term Rep 268 at 277.

16 *Ware v Grand Junction Water Co* (1831) 2 Russ & M 470.

UPDATE

1145 Creation and constitution of a corporation incorporated by Act of Parliament

NOTE 5--Companies Act 1985 ss 1, 13 replaced by Companies Act 2006 ss 3-5, 7, 15, 16: see COMPANIES vol 14 (2009) PARAS 79, 80, 102, 119, 120.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(1) MEMBERS/1146. Number of members.

3. MEMBERSHIP AND GOVERNANCE

(1) MEMBERS

1146. Number of members.

No special limits are placed on the number of members composing a corporation aggregate, provided that the number is definite or capable of being ascertained¹. There must, however, be at least two members², and the minimum number is in some cases greater by statute³. The maximum number of members may, however, be restricted by the constitution⁴, and a corporation cannot plead ignorance of its constitution⁵.

1 Grant, Law of Corporations 48. For the meaning of 'corporation aggregate' see PARA 1109 ante.

2 Grant, Law of Corporations 48; Companies Act 1985 s 1(1). Notwithstanding s 1(1), one person may, for a lawful purpose, by subscribing his name to a memorandum of association and otherwise complying with the requirements of the Companies Act 1985 in respect of registration, form an incorporated company, being a private company limited by shares or by guarantee: s 1(3A) (added by the Companies (Single Member Private Limited Companies) Regulations 1992, SI 1992/1699, reg 2, Schedule para 1).

3 Eg five in the case of parish councillors: see the Local Government Act 1972 s 16(1) (amended by the Local Government and Rating Act 1997 s 33(1), Sch 3 para 9); and LOCAL GOVERNMENT vol 69 (2009) PARA 33.

4 *Page v R* (1792) 2 Ridg Parl Rep 445 at 502, HL.

5 Grant, Law of Corporations 23.

UPDATE

1146 Number of members

NOTE 2--Companies Act 1985 s 1 replaced by Companies Act 2006 ss 3-5, 7: see COMPANIES vol 14 (2009) PARAS 79, 80, 102.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(1) MEMBERS/1147. Qualification of members.

1147. Qualification of members.

All persons, including aliens¹, minors² and corporations³, may become members of a corporation, except when its constitution otherwise provides⁴, or where its nature necessarily excludes them⁵. A person is not disqualified by sex or marriage for admission to any incorporated society, whether incorporated by royal charter or otherwise⁶.

A corporation has a right to make any persons it chooses members, unless it is clearly deprived of that right by prescription or express words in its charter⁷; but no one may be made a member of a corporation without his consent⁸. The executors or administrators of a deceased corporator are not members of the corporation⁹.

An inchoate right to become a member of a corporation may arise in various ways, as, for example, by birth, service or marriage¹⁰, or by a transfer of shares¹¹; but a person having the required qualifications does not necessarily possess an absolute right to be a member of a corporation¹². By custom the application of a fully qualified person for membership may be rejected, by ballot or otherwise, by the whole or a portion only of the corporation, without any reason being assigned¹³.

Where a person has a right to be admitted a member of a corporation, his admittance will not be bad because of a defect in the title of the officer presiding at the corporate meeting at which he was formally admitted¹⁴.

1 Co Litt 129b; *Princess Reuss v Bos* (1871) LR 5 HL 176 at 193.

2 *Re China Steamship and Labuan Coal Co, Capper's Case* (1868) 3 Ch App 458; *Re Hercules Insurance Co, Pugh and Sharman's Case* (1872) LR 13 Eq 566; *Nottingham Permanent Benefit Building Society v Thurstan* [1903] AC 6, HL.

3 See *Ford v Harington* (1869) LR 5 CP 282. The Sovereign in her corporate capacity is a member of the corporation in Parliament: see PARA 1128 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 201. Corporations and companies often become corporators of other corporations or companies by acquiring and holding shares in them where that can be done: see *Re Barnard's Banking Co, ex p Contract Corpn* (1867) 3 Ch App 105 at 113 per Lord Cairns LJ ('there is apparently no reason at common law why one corporate body should not become a member of another corporate body'). As to the limitations on the power of one trading corporation to become a shareholder of another see PARA 1239 post.

4 See eg the Local Government Act 1972 s 79 (as amended), by virtue of which certain persons are disqualified from election as members of local authorities; and LOCAL GOVERNMENT vol 69 (2009) PARA 117.

5 *Beresford-Hope v Lady Sandhurst* (1889) 23 QBD 79, CA; *De Souza v Cobden* [1891] 1 QB 687, CA.

6 See the Sex Disqualification (Removal) Act 1919 s 1; and *Re Leeds Banking Co, Matthewman's Case* (1866) LR 3 Eq 781.

7 *Anon* (1728) 1 Barn KB 137; *R v West Looe Corpn* (1825) 3 B & C 677 at 685 per Abbott CJ.

8 *R v Askew* (1768) 4 Burr 2186 at 2200.

9 *Allen v Gold Reefs of West Africa Ltd* [1900] 1 Ch 656 at 670, CA, per Lindley MR.

10 *R v West Looe Corpn* (1825) 3 B & C 677 at 684 per Abbott CJ. See also *R v Rye Corpn* (1828) 7 LJOSKB 107 (cited in para 1139 note 2 ante).

Where, in order to qualify for membership of a corporation, it is necessary that the applicant should have served a seven years' apprenticeship to a freeman residing within the borough, an apprenticeship served outside the borough to a freeman occasionally resident within the borough will not be sufficient: *R v Marshal* (1787) 2 Term Rep 2; cf para 1155 note 1 post.

11 See COMPANIES vol 14 (2009) PARA389 et seq.

12 *R v Eye Corpn* (1822) 1 B & C 85.

13 *R v Dublin Corp*n (1826) Batt 628.

14 *R v Slythe* (1827) 6 B & C 240 at 246.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(1) MEMBERS/1148. Corporators' right to inspect books.

1148. Corporators' right to inspect books.

The books of a corporation are, generally speaking, open to the inspection of the corporators only¹ for corporate purposes². Neither individual members nor a number of members of a corporation are entitled to demand a general inspection of the muniments, deeds, books and documents belonging to the corporation as a whole, unless it can be shown that the inspection is required in connection with some definite and particular matter in dispute or controversy between the members themselves or between the corporation on the one hand and individual members on the other³. The court will not order an inspection on general charges or merely for the purpose of discovering whether charges may be made⁴. Where at the time of bringing a claim a person has no right to inspect the books of the corporation, he will not gain the right for the purposes of the claim by subsequently becoming a corporator⁵.

1 In proper cases the right of inspection may be exercised by an accountant appointed by the persons entitled to inspect: *Norey v Keep* [1909] 1 Ch 561; *Dodd v Amalgamated Marine Workers' Union* [1924] 1 Ch 116, CA. See also the Companies Act 1985 s 191(1) (as amended) (register of debentures), s 219(1) (as amended) (inspection of register of interests in shares and reports), s 288(3) (as amended) (register of directors and secretaries), s 356(1) (as amended) (register of members and index of members' names), s 383(1) (as amended) (minute books), s 325(5), Sch 13 para 25 (as amended) (register of directors' interests).

2 *Finch v Bishop of Ely* (1828) 2 Man & Ry KB 127 at 129 per Lord Tenterden CJ. As to the right of local government electors and members of local authorities to inspect certain documents of local authorities etc see the Local Government Act 1972 s 228(1)-(3), (6)-(9) (as amended) (applied by s 246(15) (as amended) in relation to documents of charter trustees); and LOCAL GOVERNMENT vol 69 (2009) PARA 539. For an example of the grant of a mandamus (now a mandatory order) to enforce a right of inspection see *R v Southwold Corp*n, *ex p Wrightson* (1907) 97 LT 431; and for examples of its refusal see *Stevens v Berwick-upon-Tweed Corp*n (1835) 4 Dowl 277; *R v Bradford-on-Avon RDC, ex p Thornton* (1908) 99 LT 89; *R v Godstone RDC* [1911] 2 KB 465; *R v Hampstead Borough Council, ex p Woodward* (1917) 116 LT 213; *R v Barnes Borough Council, ex p Conlan* [1938] 3 All ER 226. As to mandatory orders generally see JUDICIAL REVIEW vol 61 (2010) PARA 602.

3 *R v Merchant Tailors' Co* (1831) 2 B & Ad 115; *Bank of Bombay v Suleman Somji* (1908) 99 LT 62, PC.

4 *R v Merchant Tailors' Co* (1831) 2 B & Ad 115; *Bank of Bombay v Suleman Somji* (1908) 99 LT 62, PC.

5 *Bristol Corp*n *v Visger* (1826) 8 Dow & Ry KB 434.

UPDATE

1148 Corporators' right to inspect books

NOTE 1--Companies Act 1985 s 191(1) replaced by Companies Act 2006 s 744(1): see COMPANIES vol 15 (2009) PARA 1322. Companies Act 1985 s 219(1) replaced by Companies Act 2006 ss 807(1), 811(1): see COMPANIES vol 14 (2009) PARAS 451, 453. Companies Act 1985 s 288(3) replaced by Companies Act 2006 ss 162(5), 275(5): see COMPANIES vol 14 (2009) PARAS 499, 605. Companies Act 1985 s 356(1) replaced by Companies Act 2006 s 116(1): see COMPANIES vol 14 (2009) PARA 349. Companies Act 1985 s 383(1) replaced by Companies Act 2006 s 358(1), (3): see COMPANIES vol 14 (2009) PARA 669. Companies Act 1985 s 325(5), Sch 13 para 25 replaced by Companies Act 2006 s 809(2), (3): see COMPANIES vol 14 (2009) PARA 453.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(1) MEMBERS/1149. Enforcement of right to inspect books.

1149. Enforcement of right to inspect books.

A private right in a member to peruse and take copies of a book of a corporation may be enforced by injunction restraining the corporation from continuing to refuse to comply with such right, or by a mandatory injunction directed to the corporation to comply with the right. In granting relief, the court has no jurisdiction to inquire into the motives of the applicant¹.

¹ *Davies v Gas Light and Coke Co* [1909] 1 Ch 708, CA. It would appear that, where the member's right to inspect is not of a personal or private character, a mandatory order is the proper remedy: see *R v Southwold Corpn, ex p Wrightson* (1907) 97 LT 431; *Smith v Chorley RDC* [1897] 1 QB 532 (affd [1897] 1 QB 678, CA). As to mandatory orders generally see JUDICIAL REVIEW vol 61 (2010) PARA 703 et seq.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(1) MEMBERS/1150. Disfranchisement.

1150. Disfranchisement.

Disfranchisement is the expulsion of a corporator from membership and involves the total deprivation of all privileges, rights, interests, profits and advantages which the individual member enjoyed whilst a corporator¹. The power to disfranchise is incident to a corporation at large², but not to a select body within the corporation, even though the latter may have a right to elect corporators³, unless by virtue of the charter or by prescription such a power is expressly and clearly given⁴.

The vacation of office by members of a statutory corporation is now usually governed by the statute, or by an instrument made under the statute, or, if the corporation is created by royal charter, by the charter⁵.

¹ Grant, Law of Corporations 262-263. 'Disfranchisement' signifies taking a franchise from an individual for some reasonable cause (*Symmers v R* (1776) 2 Cowp 489 at 502), and must not be confused with 'amotion', which is the depriving of a corporate officer of his office (see PARA 1163 post). As to proceedings for an injunction to restrain a person from acting in a public office see PARA 1173 post.

² *Booth v Arnold* [1895] 1 QB 571, CA (where the right of a municipal corporation to expel a member was held not to have been taken away by the Municipal Corporations Act 1882).

³ *Symmers v R* (1776) 2 Cowp 489 at 503.

⁴ *R v Doncaster Corpn* (1729) 2 Ld Raym 1564 at 1566; *Bagg's Case* (1615) 11 Co Rep 93b at 99a.

⁵ See eg the Civil Aviation Act 1982 s 2(3), Sch 1 paras 2, 3, 5 (members of the Civil Aviation Authority: see AIR LAW vol 2 (2008) PARA 50); the Atomic Energy Authority Act 1954 s 1(4) (members of the Atomic Energy Authority: see FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1364); and the Royal Charter for the Continuance of the British Broadcasting Corporation (Cm 3248) (May 1996) art 9(5) (vacation of office of governors: see TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 307). As to local authorities see eg the Local Government Act 1972 ss 83-86 (as amended); and LOCAL GOVERNMENT vol 69 (2009) PARA 294 et seq.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(1) MEMBERS/1151. Right of members to be heard.

1151. Right of members to be heard.

A corporator who has a freehold in his franchise cannot be removed or disfranchised without having been reasonably warned of the charge against him and afforded a fair opportunity to reply to it¹; the charge must be more than of general disobedience to regulations, and particular breaches must be specified². The extent, if any, to which the constitution of a corporation may exclude the principles of natural justice in relation to the expulsion of members is doubtful³. Subject to limited exceptions, a corporation which is a public authority must not act in a way which is incompatible with a Convention right protected by human rights legislation⁴.

1 *Bagg's Case* (1615) 11 Co Rep 93b. As to expulsion of members cf CLUBS vol 13 (2009) PARA 236 et seq; and as to the rules of natural justice in that connection see JUDICIAL REVIEW vol 61 (2010) PARA 630. As to remedies for improper expulsion from a trade union see eg *Lee v Showmen's Guild of Great Britain* [1952] 2 QB 329, [1952] 1 All ER 1175, CA; *Bonsor v Musicians' Union* [1956] AC 104, [1955] 3 All ER 518, HL. Exclusion or expulsion from a trade union is, however, now subject to statutory controls: see the Trade Union and Labour Relations (Consolidation) Act 1992 s 174 (as substituted and amended); and EMPLOYMENT vol 40 (2009) PARA 977.

2 *R v Doncaster Corp'n* (1729) 2 Ld Raym 1564 at 1566; *R v Chalke* (1697) 1 Ld Raym 225.

3 See eg *Gaiman v National Association for Mental Health* [1971] Ch 317 at 338, [1970] 2 All ER 362 at 380-381 (expulsion of members of company limited by guarantee), where Megarry J thought that an article giving an unrestricted power of expulsion ought to be taken into account with all other factors in determining whether the principles of natural justice had any application; and see JUDICIAL REVIEW vol 61 (2010) PARA 630. Where a charter provided that the mayor and major part of a corporation might turn out whom they pleased, a person expelled was held to have no remedy: *R v Village of Andover* (1702) 12 Mod Rep 665.

4 See the Human Rights Act 1998 ss 1(1), 6(1); and PARA 1227 post.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(1) MEMBERS/1152. Causes of disfranchisement.

1152. Causes of disfranchisement.

A corporator may be disfranchised for an offence against his duty as a corporator, of which offence the corporation is the judge¹, or for a crime in its nature heinous and atrocious and against the offender's general duty as a citizen, even though it does not particularly relate to his corporate duty, or for an offence which combines both the above². The cause of disfranchisement ought to be grounded on an act which is against the duty of a corporator, and to the prejudice of the good of the corporation of which he is a member, and against his oath which he took when he was admitted to membership³.

Where a member of a corporation has committed an offence against his duty as a corporator as well as an offence indictable at common law, he may be disfranchised for the first-mentioned offence without having been convicted of the second⁴.

Words of contempt, although spoken against the chief officer of the corporation, are grounds for punishment, not disfranchisement⁵. Similarly, if someone conspires with others to do, but does not himself execute, something which, if done by himself, would warrant his disfranchisement, it is not a sufficient ground for his disfranchisement but for punishment only⁶.

1 *R v Richardson* (1758) 1 Burr 517 at 539.

2 *R v Liverpool Corpn* (1759) 2 Burr 723 at 732 (a case of amotion from the office of common councilman in a municipal corporation, but it appears to be also sufficient authority for the statement in the text). As to amotion see PARA 1163 et seq post.

3 *Bagg's Case* (1615) 11 Co Rep 93b at 98a.

4 *R v Derby Corpn* (1735) Lee temp Hard 153.

5 *Bagg's Case* (1615) 11 Co Rep 93b at 98a.

6 *Bagg's Case* (1615) 11 Co Rep 93b at 98b.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(1) MEMBERS/1153. Restoration.

1153. Restoration.

If a corporator has been disfranchised for an insufficient cause, the court will order him to be restored¹. Where a corporator has been illegally disfranchised and has been afterwards restored, the order for restoration relates back to his original right so as to render the disfranchisement a nullity from the beginning².

1 *R v Great Grimsby Corpn* (1832) 1 LJMC 23.

2 *Symmers v R* (1776) 2 Cowp 489 at 503.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(2) OFFICERS/(i) Appointment, Powers and Duties of Officers/1154. Filling of vacant offices.

(2) OFFICERS

(i) Appointment, Powers and Duties of Officers

1154. Filling of vacant offices.

In a corporation aggregate¹ there are generally certain offices² to which certain persons are appointed or elected for the purpose of performing duties for the benefit of the corporation and the corporators. Where such an office becomes vacant, the corporation has a right to have it filled³, and the officers of a corporation which has functions of a public nature may be compelled by mandatory order to proceed to cause the office to be filled, and that notwithstanding that proceedings against one of them, questioning his title to office, may be pending⁴.

An office cannot be said to be vacant when a person is in actual exercise of the office, even though under an irregular appointment⁵, and it will be necessary for the occupier to be removed from the office, before it may be refilled⁶. Where a person is elected to fill an office erroneously supposed to be vacant, the election will be bad and cannot be referred to another similar office which was also vacant at the time of the election⁷. A person de facto in possession of an office is presumed to be rightly in possession until the contrary is established by due course of law⁸, and after the death of a person who has held an office his eligibility for that

office cannot be disputed but only the fact whether he did hold the office or not⁹. Where a person may be acting under either of two appointments, the one legal and the other not legal, it will be presumed that he acts under that which is legal¹⁰.

1 For the meaning of 'corporation aggregate' see PARA 1109 ante.

2 It is impossible to make any general statement as to these offices, as they vary according to the particular class to which a corporation belongs. Reference should, therefore, be made to the appropriate title in this work. In relation to local authorities the appointment of paid officers, who are not members of the council, is governed by statute; and the acceptance of paid office is in general a statutory disqualification for office as a member of the local authority: see the Local Government Act 1972 s 80 (as amended); and LOCAL GOVERNMENT vol 69 (2009) PARA 119.

3 *R v Cambridge Corpn* (1767) 4 Burr 2008 at 2010.

4 *R v Grampound Corpn* (1795) 6 Term Rep 301.

5 *R v Grimshaw* (1847) 10 QB 747 at 754 per Patterson J.

6 *R v Truro Corpn* (1820) 3 B & Ald 590. As to removal from office see PARAS 1163-1174 post.

7 *R v Smith* (1814) 2 M & S 406.

8 *Piper v Dennis* (1698) 12 Mod Rep 253.

9 *R v Spearing* (1771) cited in 1 Term Rep 4.

10 *R v Thomas* (1838) 3 Nev & PKB 288 at 293 per Littledale J.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(2) OFFICERS/(i) Appointment, Powers and Duties of Officers/1155. Qualification for office.

1155. Qualification for office.

As a general rule a person will not be eligible to fill a corporate office unless he possesses certain qualifications specified in the constitution of the particular corporation. Thus where several charters authorise the members to elect a certain officer 'from among themselves', and a later charter dealing with the election to the same office omits the words 'from among themselves', the omission in the later charter does not operate to enlarge the limitation imposed by the previous charter, when the limitation is also supported by usage both before and after the later charter¹.

1 *R v Grant* (1830) 8 LJOSKB 325. Where a person is required to hold one office in order to qualify for another office, the second office is founded on, and not derived from or under, the first: *R v Stokes* (1813) 2 M & S 71 at 74. See also PARA 1161 post. Where by custom the qualification for office is that the candidate should have served an apprenticeship to a corporator carrying on a trade, the service of a trainee solicitor under a trainee contract will not afford the requisite qualification: *R v Doncaster Corpn* (1828) 7 B & C 630; cf para 1147 note 4 ante.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(2) OFFICERS/(i) Appointment, Powers and Duties of Officers/1156. Disqualification.

1156. Disqualification.

The instrument creating a corporation may expressly disqualify certain persons from holding office¹; but a corporation cannot by means of a byelaw narrow the number of persons eligible for election to corporate offices². Where a person has once been duly elected to an office, he has a right to be admitted to it; and a byelaw seeking to impose a disqualification on a person duly elected is not valid³.

It is probable that a minor cannot be elected to a corporate office⁴; but it appears to be clear that, even if elected, he cannot be admitted⁵ to any office, especially if the office is one of pecuniary trust⁶.

1 See eg the Local Government Act 1972 s 80 (as amended); and LOCAL GOVERNMENT vol 69 (2009) PARA 119.

2 *R v Tunwell* (1783) 3 Doug KB 207. As to byelaws see PARA 1187 et seq post.

3 *R v Saddlers' Co* (1860) 3 E & E 42 at 68 per Cockburn CJ; on appeal (1863) 10 HL Cas 404.

4 The point seems never to have been actually decided: see *R v White* (1733) Lee temp Hard 8; *R v Carter* (1774) 1 Cowp 58; *Re Royal Naval School, Seymour v Royal Naval School* [1910] 1 Ch 806.

5 *R v Carter* (1774) as reported in Lofft 516 at 519 per Lord Mansfield CJ.

6 *Claridge v Evelyn* (1821) 5 B & Ald 81 at 86 per Abbott CJ. As to the capacity of children see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 4 et seq.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(2) OFFICERS/(i) Appointment, Powers and Duties of Officers/1157. Residence.

1157. Residence.

An officer of a corporation is not obliged to reside in a certain place or within a certain district, unless the constitution or the nature of his office or public justice or convenience requires him to do so¹; but where residence in a particular locality is necessary to qualify a candidate for a corporate office, the duration of residence prior to election is immaterial, provided that the residence was in good faith². Where by a charter it is declared that the officer should be a resident within a certain district on pain of forfeiting a penalty, non-residence within the district does not disqualify him for holding office, but only renders him liable to the penalty³.

1 *R v Portsmouth Corpn* (1824) 3 B & C 152.

2 *R v Sargent* (1793) 5 Term Rep 466.

3 *R v Williams* (1813) 2 M & S 141 at 143, 144; cf *R v Leyland* (1814) 3 M & S 184.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(2) OFFICERS/(i) Appointment, Powers and Duties of Officers/1158. Acceptance of office.

1158. Acceptance of office.

A person who has been elected to a corporate office is bound to accept it and take the prescribed oath or declaration, if any, within a reasonable time after his election, or he will be deemed to have waived his election¹. Where an officer is required by the constitution to be sworn to do and observe certain matters pertaining to his office, his title to his office is not complete until he has taken the oath required of him or made the substituted statutory declaration². Thus where a charter of incorporation directs that a particular officer of the corporation shall continue in office until another is duly elected and sworn, the latter, though duly elected, cannot act before he has been duly sworn³.

By the terms of the charter the person elected may be compelled to accept office⁴. Even where a byelaw imposes a fine on a member in the event of his refusing to accept a corporate office, it does not follow that payment of the fine will exempt him from taking the office, for he may be compelled to take the office notwithstanding his having paid the fine⁵. A person may, however, be ineligible for holding a corporate office, or may have the option to refuse it by reason of his having already held the same office within a certain period prescribed by the constitution⁶.

1 *R v Jordan* (1736) Lee *temp* Hard 255. As to declarations in lieu of oaths see the Promissory Oaths Act 1868 ss 12, 13, 15; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 926.

2 *R v Roberts* (1835) 5 Nev & MKB 130. See also *R v Swyer* (1830) 10 B & C 486; the Local Government Act 1972 s 83 (as amended); and LOCAL GOVERNMENT vol 69 (2009) PARA 143.

3 *Prowse v Foot* (1725) 2 Bro Parl Cas 289; *Pender v R* (1725) 2 Bro Parl Cas 294, HL.

4 *R v Leyland* (1814) 3 M & S 184. He may be compelled only if he is qualified for the office: cf *R v Richmond Justices* (1862) 11 WR 65.

5 *R v Bower* (1823) 2 Dow & Ry KB 842.

6 *R v Swyer* (1830) 10 B & C 486.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(2) OFFICERS/(i) Appointment, Powers and Duties of Officers/1159. Tenure of office.

1159. Tenure of office.

Where an officer is appointed for an indefinite period, he is presumed to continue to hold his office until the contrary is shown¹. As a general rule of construction, a power to appoint an officer implies a power to appoint for life unless a contrary intention is manifest². An officer who is elected during good behaviour is elected to all intents and purposes for life and has what is called a freehold office for his life³.

By custom an officer may be appointed during pleasure, but the custom must be specially pleaded and proved⁴. Where the constitution authorises the appointment of an officer of the corporation, but at the same time gives the appointors a very wide discretionary power to remove a person so appointed from his office, the appointment is at pleasure only and may be determined at discretion⁵.

Where the charter of a corporation provides that a particular officer is to be chosen annually, it is directory only and is not to be construed as terminating the office at the end of the year after his election; he will continue in office until his death or removal or another is elected and, if necessary, admitted⁶. The constitution of the corporation may, however, expressly provide for the retirement of the officers at the end of the year. Thus where a new charter, after abolishing certain old methods, establishes a new method of election to corporate office 'for one whole year then next following', the old power of holding over is taken away⁷.

The entire estate in an office is in the occupant, there being no reversionary estate in it so long as it is full⁸.

- 1 *Steward v Dunn* (1844) 1 Dow & L 642 at 647.
- 2 Grant, Law of Corporations 34.
- 3 *Robarts v London Corp*n (1882) 46 LT 623 at 626 per Kay J; on appeal (1883) 49 LT 455, CA.
- 4 *R v Coventry Corp*n (1698) 1 Ld Raym 391.
- 5 *R v Governors of Darlington School* (1844) 6 QB 682 at 716, Ex Ch.
- 6 *Prowse v Foot* (1725) 2 Bro Parl Cas 289.
- 7 *R v Philips* (1720) 1 Stra 394.
- 8 *St Katherine's Hospital Case* (1671) 1 Vent 149 at 151.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(2) OFFICERS/(i) Appointment, Powers and Duties of Officers/1160. Powers and duties of officers.

1160. Powers and duties of officers.

It is the right and duty of the officers of a corporation to inform and guide the corporators in matters affecting corporate interests¹. The powers of officers vary considerably according to the nature and constitution of the corporation².

Where a corporation aggregate is one indivisible body, the head of the corporation as such cannot act without the concurrence of the body as he is only a part of the entire corporation³. Usage and precedent may be taken into consideration⁴.

1 *Peel v London and North Western Ry Co* [1907] 1 Ch 5 at 21, CA, per Buckley LJ. A corporation will be deemed to have notice of all matters which come to the knowledge of its officers, and which it is their duty to communicate to it: see *Re David Payne & Co Ltd*, *Young v David Payne & Co Ltd* [1904] 2 Ch 608, CA; and COMPANIES vol 14 (2009) PARA 127.

2 See PARA 1230 et seq post.

3 *Southampton Corp*n Case (1483) Jenk 162. Where, therefore, on a sale by auction of lands belonging to a corporation, the head of the corporation signed the contract on its behalf, it was held that he could not sue the purchaser for breach of contract: *Bowen v Morris* (1810) 2 Taunt 374, Ex Ch. For the meaning of 'corporation aggregate' see PARA 1109 ante.

4 *Southampton Corp*n Case (1483) Jenk 162 (where the head had for a long period given receipts for certain yearly payments payable to the corporation, and the corporation was held to be bound by them).

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(2) OFFICERS/(i) Appointment, Powers and Duties of Officers/1161. Relation between higher and lower offices.

1161. Relation between higher and lower offices.

Where a charter creates a series of offices within the corporation and directs that only persons who have held the lower offices shall be eligible to hold the higher, a person who is, by the charter, appointed to be the first holder of a higher office will, by implication, be deemed to be entitled to all the privileges of the lower office¹; but where a person holding a subordinate office is elected to a superior office and is subsequently ousted from it, he does not by such ouster return to his former subordinate office².

1 *R v Perkins* (1824) 4 Dow & Ry KB 427; *R v Downes* (1826) 5 B & C 182.

2 *R v Hubball* (1826) 9 Dow & Ry KB 143.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(2) OFFICERS/(i) Appointment, Powers and Duties of Officers/1162. Appointment of deputies.

1162. Appointment of deputies.

A corporate officer may not appoint a deputy to act for him generally unless he has clear authority to do so by the constitution¹, and it is immaterial that a byelaw made subsequent to the charter may require him 'or his sufficient deputy' to execute the duties of his office². Where there is a power by charter for an officer to appoint a deputy, the latter has as a general rule all the powers of his principal, but such powers are only corporate powers³.

1 *R v Gravesend Corpn* (1824) 4 Dow & Ry KB 117 (where the court seemed to think that an officer might appoint a deputy to do a purely ministerial act for him, subject to the approval of the corporation).

2 *R v Gravesend Corpn* (1824) 4 Dow & Ry KB 117. As to byelaws see PARA 1187 et seq post.

3 *Jones v Williams* (1825) 3 B & C 762 at 771 per Holroyd J.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(2) OFFICERS/(ii) Vacation of Office (Amotion)/1163. Power of amotion.

(ii) Vacation of Office (Amotion)

1163. Power of amotion.

'Amotion' means depriving a corporate officer of his office¹. A power of amotion is incident to a corporation, unless it has been taken away by statute². It is necessary to the good order and government of corporate bodies that there should be such a power, and a corporation may by its incidental power to make byelaws confer on itself power to amove for just cause, although there is no express power by the charter or prescription to make such a byelaw³.

A power to amove is strictly interpreted. Thus the word 'majority' will, in connection with such a power, be construed to mean a majority of the whole corporation, including the persons to be amoved⁴.

1 Grant, Law of Corporations 240. Amotion must not be confused with disfranchisement, which is the expulsion of a corporator from membership: see PARA 1150 ante.

2 *Booth v Arnold* [1895] 1 QB 571 at 578, CA.

3 *R v Richardson* (1758) 1 Burr 517 at 539. For an example of an express power given by charter see *R v West Looe Corpn* (1824) 5 Dow & Ry KB 414. A power to amove is implied from the incidental power to make byelaws: *R v Doncaster Corpn* (1729) 1 Barn KB 264. As to the power to make byelaws see PARAS 1188-1190 post.

4 *R v Sutton* (1711) 10 Mod Rep 74 at 76.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(2) OFFICERS/(ii) Vacation of Office (Amotion)/1164. Effect of forfeiture.

1164. Effect of forfeiture.

Where a person has been duly admitted to a corporate office and by some act or circumstance has forfeited it, the mere act or circumstance does not operate as a vacation of the office, but the holder must be duly amoved therefrom by the corporation or other competent authority¹, although this cannot as a rule be done until the officer has been heard in his defence, or at least had notice of the intention to remove him².

1 *R v Heaven* (1788) 2 Term Rep 772; cf *Hardwick v Brown* (1873) LR 8 CP 406; and see the Local Government Act 1972 ss 86, 87 (as amended); and LOCAL GOVERNMENT vol 69 (2009) PARAS 298-299. For the meaning of 'amotion' see PARA 1163 ante. As to amotion by a committee see PARA 1167 post.

2 *R v Saddlers' Co* (1863) 10 HL Cas 404.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(2) OFFICERS/(ii) Vacation of Office (Amotion)/1165. Removal of life officer.

1165. Removal of life officer.

Unless there is a clear direction to the contrary in the charter of incorporation, a freehold office within a chartered corporation is not determined during the life of the holder without some formal act, such as amotion¹; and such a person is entitled to be summoned before he is removed, and, where he has left the country temporarily, an endeavour should be made to communicate with him². Where, however, he has absconded without any apparent intention of returning, it is not necessary to search for him before taking proceedings to remove him². Such an officer may also be suspended; and a mere irregularity in procedure is immaterial if there exists good cause for his suspension³.

1 *R v Truro Corpn* (1820) 3 B & Ald 590 at 592. For the meaning of 'amotion' see PARA 1163 ante.

2 *R v Harris* (1831) 1 B & Ad 936 (where the officer in question had been charged with forgery).

3 *R v London Corpn* (1787) 2 Term Rep 177.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(2) OFFICERS/(ii) Vacation of Office (Amotion)/1166. Removal of officer at will.

1166. Removal of officer at will.

Where a person is appointed to and holds an office at the will of the corporation, he may be removed from it at the will of the corporation¹, which may be signified to him by mere declaration by the competent authority², although in some cases it may be that the declaration must be under the corporate seal³.

The surrender of the charter will operate to determine an office held under it during pleasure⁴; but a judgment given against a corporation 'that the liberties thereof be seized into the King's hands', does not operate as an amotion of its officers⁵.

1 *Dighton's Case* (1670) T Raym 188; *R v Governors of Darlington School* (1844) 6 QB 682 at 716, Ex Ch; *Hayman v Governors of Rugby School* (1874) LR 18 Eq 28.

2 *Robarts v London Corpn* (1883) 49 LT 455, CA; and see *R v Cambridge Corpn* (1679) 2 Show 69.

3 *Holt v Medlicott* (1676) 1 Freem KB 428. As to the need for a corporate seal see PARAS 1122-1124 seq ante, 1261 et seq post.

4 Grant, Law of Corporations 47.

5 *R v London Corpn* (1692) Skin 310. For the meaning of 'amotion' see PARA 1163 ante.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(2) OFFICERS/(ii) Vacation of Office (Amotion)/1167. Power of select body.

1167. Power of select body.

By special provision of the constitution the power of amotion may be conferred on a select body within the corporation¹. A corporation may perform the duty of examining into the complaint against the officer by means of a committee of its members, and, on the report of that committee, dismiss him, even though the office is a freehold². Corporations in general have power to amove the members of a select body for sufficient cause³.

The removal of its officers does not extinguish the rights of the corporation⁴.

1 *R v Lyme Regis Corpn* (1779) 1 Doug KB 149 at 158-159 per Buller J. For the meaning of 'amotion' see PARA 1163 ante.

2 *Osgood v Nelson* (1872) LR 5 HL 636.

3 *R v London Corpn* (1829) 4 Man & Ry KB 36 at 60 per Lord Tenterden CJ.

4 *Colchester Corpn v Seaber* (1766) 3 Burr 1866 at 1873.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(2) OFFICERS/(ii) Vacation of Office (Amotion)/1168. Causes of amotion.

1168. Causes of amotion.

In general, there are three classes of offences for which an officer of a corporation may be discharged:

- 18 (1) offences such as have no immediate relation to his office, but are in themselves of so infamous a nature as to render the offender unfit to execute any public franchise¹;
- 19 (2) offences such as are only against the duty of his corporate office, and amount to breaches of the tacit condition annexed to his office or franchise²; and
- 20 (3) offences which are not only against the duty of his office, but are also indictable at common law³.

For offences falling within head (1) above there must be indictment and conviction previous to amotion; but for offences falling within heads (2) and (3) above the officer may be amoved without previous conviction⁴.

Whether non-performance of an office is a cause of amotion generally depends on the nature of the office, the time of non-performance, and other circumstances⁵. Inability to perform the duties of office is a good ground for amotion⁶, and so is negligence in the performance of the duties⁷, and bribery⁸, and breach of trust⁹. Non-residence of an officer within a certain district, even when residence is required of him¹⁰, is not a sufficient ground for an injunction to restrain him from acting in the office, unless there has been a previous amotion or some other proceeding has been brought against him in respect of such non-residence¹¹.

1 *R v Tiverton Corpn* (1723) 8 Mod Rep 186.

2 *R v Chalke* (1697) 1 Ld Raym 225. A mere breach of a byelaw is not sufficient: *R v Great Grimsby Corpn* (1832) 1 LJMC 23. As to byelaws see PARA 1187 et seq post.

3 *R v Liverpool Corpn* (1759) 2 Burr 723 at 733 per Lord Mansfield CJ.

4 *R v Richardson* (1758) 1 Burr 517 at 538 per Lord Mansfield CJ; *R v Liverpool Corpn* (1759) 2 Burr 723 at 732; *R v Carlisle Corpn* (1723) Fortes Rep 200. For the meaning of 'amotion' see PARA 1163 ante.

5 *R v Ponsonby* (1755) 1 Ves 1 at 6 per Ryder CJ; affd (1758) 2 Bro Parl Cas 311, HL. For an example of amotion for this cause see *Lord Bruce's Case* (1728) 2 Stra 819 (non-attendance of recorder).

6 *R v London Corpn* (1785) 4 Doug KB 360 at 386.

7 *R v Wells Corpn* (1767) 4 Burr 1999 at 2004.

8 *R v Tiverton Corpn* (1723) 8 Mod Rep 186.

9 *R v Doncaster Corpn* (1729) 1 Barn KB 264 at 265.

10 See PARA 1157 ante.

11 *R v Ponsonby* (1758) 2 Bro Parl Cas 311, HL. As to injunctions to restrain persons from acting in public offices see PARA 1173 post.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(2) OFFICERS/(ii) Vacation of Office (Amotion)/1169. Resignation of head.

1169. Resignation of head.

The chief officer of a corporation will not be allowed to give up his office, either collusively or voluntarily, when those whose rights depend on it are desirous of maintaining it without any charge or expense to him¹.

1 *R v Dawes* (1769) 4 Burr 2277 at 2279.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(2) OFFICERS/(ii) Vacation of Office (Amotion)/1170. Incompatible offices.

1170. Incompatible offices.

The appointment by a corporation of one of its officers to an office which is incompatible with that which he holds prior to such appointment, and his acceptance of the second appointment, form a ground for the amotion of the officer from the first office¹; such acceptance does not, as a general rule, operate automatically as an absolute avoidance of the former office, however much it may be a ground for removal or amotion from that office, unless the first office is one which the officer could terminate by his own act, or the acceptance is made by or with the concurrence of that authority which has the power to accept the surrender of the first office or to amove from it². This applies whether the second office is superior or inferior to the first³. Offices are said to be incompatible where the holder of two offices cannot in every instance discharge the duties of each⁴. The evidence adduced to prove that a person has vacated an office by the acceptance of a second office incompatible with the first must show a valid appointment to the second⁵. The second office must have been accepted, for it is impossible to turn any person out of his office by electing him to another against his consent⁶.

1 *R v Trelawney* (1765) 3 Burr 1615; *R v Pateman* (1788) 2 Term Rep 777 (as explained in *R v Patteson* (1832) 4 B & Ad 9). For the meaning of 'amotion' see PARA 1163 ante.

2 *R v Patteson* (1832) 4 B & Ad 9 at 26 per Parke J. See, however, contra *R v Hughes* (1826) 5 B & C 886; *Milward v Thatcher* (1787) 2 Term Rep 81. In *R v Patteson* supra at 28 it was expressly stated, after the previous authorities on the subject had been reviewed, that the court did not mean to undermine the rule that two incompatible offices cannot be held together.

3 *Milward v Thatcher* (1787) 2 Term Rep 81.

4 *R v Tizzard* (1829) 9 B & C 418. Thus where the one officer's accounts are audited by a second officer or the first acts ministerially under the second, who is a judicial officer, the offices are incompatible: *R v Pateman* (1788) 2 Term Rep 777; *Milward v Thatcher* (1787) 2 Term Rep 81.

5 *R v Day* (1829) 9 B & C 702.

6 *Milward v Thatcher* (1787) 2 Term Rep 81.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(2) OFFICERS/(ii) Vacation of Office (Amotion)/1171. Amotion at adjourned meeting.

1171. Amotion at adjourned meeting.

It is no objection to the amotion of an officer of a corporation that the corporate meeting at which the proceedings on amotion occurred was held by adjournment from one of the charter days at which, by the constitution of the corporation, every member of the corporation is supposed to be present¹.

1 *R v Harris* (1831) 1 B & Ad 936. For the meaning of 'amotion' see PARA 1163 ante. As to adjournment of meetings see PARA 1214 post. For the meaning of 'charter day' see PARA 1202 post.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(2) OFFICERS/(ii) Vacation of Office (Amotion)/1172. Appeal to visitor.

1172. Appeal to visitor.

Where a member of a corporation which is subject to visitatorial jurisdiction¹ has been amoved², and desires to appeal from the decision of the corporate authority to amove him, his proper course is not to appeal to the High Court to restore him to the status from which he was amoved, but to appeal to the visitor as the proper judicial authority in such a case appointed by the founder³.

1 See PARA 1186 post.

2 For the meaning of 'amotion' see PARA 1163 ante.

3 *R v Dean and Chapter of Chester* (1850) 15 QB 513.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(2) OFFICERS/(ii) Vacation of Office (Amotion)/1173. Injunctions to restrain persons from acting in public offices.

1173. Injunctions to restrain persons from acting in public offices.

Where a person not entitled to do so acts in any substantive office of a public nature and permanent character which is held under the Crown or has been created by any statutory provision or royal charter, the High Court may grant an injunction restraining him from so acting and may, if the case so requires, declare the office to be vacant¹. An application for such an injunction is made by way of judicial review².

Similar statutory provisions now regulate the method of instituting proceedings against a person for acting while disqualified as a member of a local authority³.

1 Supreme Court Act 1981 s 30(1), (2). Note that the Supreme Court Act 1981 is to be renamed the Senior Courts Act 1981 by the Constitutional Reform Act 2005 s 59(5), Sch 11 para 1 as from a day to be appointed by order under s 148(1). At the date at which this volume states the law, no such day had been appointed.

2 See the Supreme Court Act 1981 s 31(1) (as amended); and JUDICIAL REVIEW vol 61 (2010) PARA 718.

3 See the Local Government Act 1972 s 92 (as amended); and LOCAL GOVERNMENT vol 69 (2009) PARA 301. See also the Environment Act 1995 s 19, Sch 5 para 3(6) (applying the Local Government Act 1972 s 92 (as amended)) (disqualification for appointment as a member of a flood defence committee); and WATER AND WATERWAYS vol 101 (2009) PARA 566.

UPDATE

1173 Injunctions to restrain persons from acting in public offices

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 1--Appointed day is 1 October 2009: SI 2009/1604.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(2) OFFICERS/(ii) Vacation of Office (Amotion)/1174. Effect of amotion; restoration after amotion.

1174. Effect of amotion; restoration after amotion.

A judgment of ouster against a corporate officer is conclusive against all persons deriving title to office through him, except where the judgment has been obtained by fraud¹.

A power to restore after amotion is implied in every case where there is a power to elect to an office². A person who has been amoved by the corporation from his office and restored to it by mandatory order cannot maintain a claim for damages against the members of the corporation who amoved him by a corporate act³.

1 *R v York Corpn* (1792) 5 Term Rep 66.

2 *Holt's Case* (1676) 1 Freem KB 441. For the meaning of 'amotion' see PARA 1163 ante.

3 *Harman v Tappenden* (1801) 3 Esp 278 (where malice was not charged against the defendants).

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(3) ELECTION OF MEMBERS AND OFFICERS/1175. Inherent power to elect members and officers.

(3) ELECTION OF MEMBERS AND OFFICERS

1175. Inherent power to elect members and officers.

A power to elect new members is incident to every corporation aggregate if no other method of keeping up the succession is set out by the constitution¹, but, where the corporation is composed of an indefinite number of members, it will not be compelled to elect members².

A corporation has a right to have all its offices filled. Where, therefore, a person is selected by a colourable election, it being known at the time that he cannot be sworn in or perform the duties of his office, it is a void election; the person so elected has no estate in his office, and the court may order the office to be filled on the footing that it is vacant³.

If a corporation is authorised to elect to offices rendered vacant by death or disfranchisement only, it cannot proceed to election except to fill a vacancy caused by one of those events⁴.

1 *R v West Looe Corpn* (1825) 3 B & C 677 at 687 per Bayley J. For the meaning of 'corporation aggregate' see PARA 1109 ante. As to the law governing elections of members of local authorities by the local government electors, and elections to office by members of local authorities, see ELECTIONS AND REFERENDUMS vol 15(3) (2007 Reissue) PARAS 10-11; LOCAL GOVERNMENT vol 69 (2009) PARA 126 et seq; LONDON GOVERNMENT.

2 Eg free burgesses of a borough: *R v Fowey Corpn* (1824) 2 B & C 584.

3 *R v Cambridge Corpn* (1767) 4 Burr 2008 at 2010.

4 *Page v R* (1792) 2 Ridg Parl Rep 445 at 503, HL. For the meaning of 'disfranchisement' see PARA 1150 ante.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(3) ELECTION OF MEMBERS AND OFFICERS/1176. Right to take part in election.

1176. Right to take part in election.

One section of a corporation cannot be excluded by the rest from taking part in an election, and a byelaw made by one section of the corporation attempting such exclusion will be bad¹; nor can a qualification which is contrary to the constitution of a corporation be superadded by means of a byelaw to the right of an elector to vote at corporate elections². Usage or a byelaw restricting the number of electors will, however, be good unless the restriction is unreasonable³. Where by the ancient constitution of a corporation a certain class of persons is disqualified from voting at particular elections, and by a subsequent charter another class of persons is disqualified from voting at the same elections, the effect is not to substitute a new disqualification for the old, but to create a new disqualification in addition to the old⁴.

1 *R v Cutbush* (1768) 4 Burr 2204 at 2208. It is otherwise if the byelaw is made by the whole corporation: see PARA 1178 post. As to byelaws see PARA 1187 et seq post.

2 *R v Spencer* (1766) 3 Burr 1827 at 1838 per Wilmot J.

3 *R v Attwood* (1833) 1 Nev & MKB 286. The reason for this rule is explained at 300 per Littledale J to be 'because it tends to prevent disorder and confusion at elections'. See, however, para 1177 text and note 1 post.

4 *R v Abell* (1823) 3 Dow & Ry KB 390.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(3) ELECTION OF MEMBERS AND OFFICERS/1177. Quorum.

1177. Quorum.

Where a corporation consists of a definite number of corporate electors, a majority of that number must in general be present in order to constitute a valid election¹; but where a corporation consists of an indefinite number of corporate electors, a majority only of those existing at the time of the election need be present².

When an election is to be made by a definite body only, or the electoral assembly is to consist of a definite and an indefinite body, the majority of the definite body must, as a general rule, be present in order to render the election legal³. It is not necessary that a majority of the indefinite body should be present, so long as there is a majority of the definite body⁴. If a constituent part of a corporation refuses to be present at an election, it cannot be held, and an election by the remaining parts will be void⁵; but electors present at an election and abstaining from voting are deemed to acquiesce in the election made by those who vote⁶.

Where by the constitution an electoral body is to be composed of a definite number of persons, and after an election it is found that one of the supposed electors was not qualified to be an elector, the election is bad⁷.

1 *R v Bellringer* (1792) 4 Term Rep 810 at 822. The reason for this rule has been stated to be that otherwise, by allowing the number of electors to diminish, the power of election might ultimately get into the hands of three or four persons, which would be contrary to the spirit of the constitution, unreasonable, and even dangerous: *R v Devonshire* (1823) 1 B & C 609 at 614. A corporation may, however, have the right either by

express provision in its charter or by prescription to act by a majority of its members for the time being in existence: see PARA 1208 post.

2 *R v Bellringer* (1792) 4 Term Rep 810 at 822.

3 See *R v Ipswich Corp* (1706) 2 Ld Raym 1232; *Cotton v Davies* (1717) 1 Stra 53.

4 *R v Bower* (1823) 2 Dow & Ry KB 761 at 769.

5 1 Roll Abr 514.

6 *R v Foxcroft* (1760) 2 Burr 1017 at 1021.

7 *R v Bedford Corp* (1721) 8 Mod Rep 35.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(3) ELECTION OF MEMBERS AND OFFICERS/1178. Delegation.

1178. Delegation.

A corporation may, unless specially prohibited, make a byelaw enabling the whole body of members of the corporation to delegate the right of election of corporate officers or members to a committee of members; it is immaterial whether the number of such officers or members is definite or indefinite¹.

Persons who are not members of a corporation may be authorised by the constitution to vote at elections to offices in the corporation².

1 *R v Westwood* (1830) 4 Bli NS 213, HL; and see *Wilson v Dennison* (1750) Amb 82 at 85. In certain charters it was declared that the officers of the corporation should be chosen by the members generally, but by ancient usage the elections had been made by a select body; it was held that such usage was good, and must be presumed to have originated in some ancient ordinance and constitution: *Case of Corporations* (1598) 4 Co Rep 77b. Where, therefore, by the charter of incorporation the corporation was to elect annually four wardens from the members of the corporation, and for 400 years it had been the custom for the wardens to be elected by a court of assistants, who were elected by the court of assistants itself from the members of the corporation at large, and the court of assistants had always elected wardens from members of the corporation at large, but usually, though not invariably, from such members as were also members of the court of assistants, it was held that a byelaw authorising such procedure would be good, that the electors were not self-elected, and that, if they had been, it would not have destroyed the representative character of the electoral body: *R v Powell* (1854) 3 E & B 377.

2 *R v Dulwich College* (1851) 17 QB 600 at 628.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(3) ELECTION OF MEMBERS AND OFFICERS/1179. Candidates.

1179. Candidates.

A candidate for election to an office has a right to have the requirements of the constitution of the corporation completely fulfilled so far as concerns the electors¹.

A person having a right to nominate a candidate for election does not necessarily lose his right to nominate by reason of his having to preside at the election².

A byelaw purporting to regulate the class of members from which an officer of the corporation may be elected is void if repugnant to the charter of incorporation³ or if it restricts⁴ or extends⁵

the number of candidates. Thus where a charter directed that certain officers were to be elected 'out of the burgesses and inhabitants', a usage under which burgesses who were not inhabitants were declared to be eligible was bad⁶.

1 *Grattan v Lendrick* (1829) 2 Hud & B 409 at 422 per Burton J.

2 *R v Nance* (1740) 7 Mod Rep 337 at 342.

3 *Tucker v R* (1742) 2 Bro Parl Cas 304, HL. As to byelaws see PARA 1187 et seq post.

4 *R v Attwood* (1833) 1 Nev & MKB 286. In *Barber v Boulton* (1720) 1 Stra 314, a byelaw reducing the persons eligible to a select number was held good. Similarly, where by a charter of Edward III an election was to be by and out of the corporation at large, it was held that this might be restrained and regulated by usage to the choice by the corporation at large of one out of two candidates nominated by a select committee: *Butler v Palmer* (1698) 1 Salk 190. In *R v Spencer* (1766) 3 Burr 1827 at 1834, however, Lord Mansfield CJ stated that it was settled law that a byelaw could not narrow the persons out of whom the election is to be made.

5 *R v Bumstead* (1831) 2 B & Ad 699.

6 *R v Salway* (1829) 4 Man & Ry KB 314 at 332.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(3) ELECTION OF MEMBERS AND OFFICERS/1180. Voting for unqualified persons.

1180. Voting for unqualified persons.

A vote given for an unqualified candidate is presumed to have been given in ignorance of the disqualification until the contrary is shown by clear evidence¹; and the voter may vote again in favour of a duly qualified candidate². Votes knowingly cast for an unqualified candidate are thrown away³.

Where, out of several candidates for election to one office, an unqualified person has received the most votes, his election is bad owing to his disqualification; and there must be a new election, because the person who received the next greatest number of votes at the election cannot be said to have been elected⁴. Where several candidates are elected to fill more than one vacancy at the same time, and one of them is subsequently found to have been disqualified for being elected, the election is void as to him only, and not the others⁵.

1 *Anthony v Seger* (1789) 1 Hag Con 9 at 12 per Sir W Scott.

2 *Gosling v Veley* (1847) 7 QB 406 at 437; revsd on another point (1853) 4 HL Cas 679.

3 *R v Foxcroft* (1760) 2 Burr 1017 at 1021.

4 *R v Bedford Corp'n* (1721) 8 Mod Rep 35 at 37.

5 *R v Bedford Corp'n* (1721) 8 Mod Rep 35 at 36. Where two persons stood as candidates for election to one office, and, after two votes had been cast in favour of each, notice was given that one of the candidates was disqualified for being a candidate, but, the poll having proceeded to a conclusion, more votes were cast for the disqualified candidate than the other, and both were duly sworn in as having been duly elected, it was held that all votes cast for the disqualified candidate after notice of the disqualification were void, and that consequently the other candidate, having received a majority of legal votes and been sworn in, had been duly elected, and that the office had thereupon been legally filled up: *Hawkins v R* (1813) 2 Dow 124, HL.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(3) ELECTION OF MEMBERS AND OFFICERS/1181. Election obtained by fraud.

1181. Election obtained by fraud.

Where a candidate obtains election by means of fraud perpetrated by him before his election, his election may be avoided; but a fraud perpetrated after election, and in order to obtain admittance to office, will not avoid admittance, unless it is of such a nature that, if discovered before election, it would have resulted in the disqualification of the candidate. A mere untrue or even fraudulent statement made between election and admittance, which has no relation to circumstances which would have been a cause of disqualification before election, is not sufficient to avoid the admittance¹.

1 *R v Saddlers' Co* (1863) 10 HL Cas 404 at 465 per Lord Wensleydale.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(3) ELECTION OF MEMBERS AND OFFICERS/1182. Time for election.

1182. Time for election.

At common law a corporate election may be held at any time¹. Such a clause in a charter as that 'within eight days after the death or removal' of an officer 'the electors are to elect another in his place' is prima facie directory only and does not override the common law power². Similarly, as a general rule, a provision in an Act of Parliament stating a time for electing members of a corporation will be construed as directory only, and not as imperative³. Where the charter fixes a particular day for the holding of elections to corporate offices, elections cannot be held on any other day⁴, and, unless there is a special provision to that effect, cannot be adjourned⁵.

1 1 Roll Abr 513, 514.

2 1 Roll Abr 513, 514.

3 *R v Norwich Corp'n* (1830) 1 B & Ad 310 at 317 per Parke J.

4 *R v Tregony Corp'n* (1723) 8 Mod Rep 127 (where the court admitted that the result might be a dissolution of the corporation).

5 *R v Pole* (1733) 7 Mod Rep 194.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(3) ELECTION OF MEMBERS AND OFFICERS/1183. Proceedings at election.

1183. Proceedings at election.

As a rule the proceedings at corporate elections are regulated by the constitution of the corporation; and where a corporation accepts a new charter which materially alters the ancient method of electing officers of the corporation, the old method will be entirely determined and superseded by the new¹.

Where the mode of election is not regulated by the charter or by prescription or by statute, the corporation may formulate regulations, and this may be effected by usage or byelaws²; but a corporation cannot by means of a byelaw alter the constitutional method of election so as to alter the result or effect of an election, for to do so would be to alter the constitution itself³.

There may be a usage that elections or rejections are to be by ballot⁴.

Where there are several vacancies to be filled, or additional members to be elected, a list of candidates cannot be submitted to be voted on collectively, but each candidate must be voted on separately, or the election will be void⁵. Where, however, the elected candidates are to form a board, the vote may be taken on a list collectively, provided that all members present have had the opportunity of submitting their own lists⁶.

If an election is merely colourable, a mandatory order may be obtained on an application for judicial review to hold a fresh election, for the first election is void⁷. Where, however, a candidate has been returned as elected and has afterwards been admitted to the office, the court will not grant a mandatory order for the purpose of trying the validity of the election; in such a case the proper remedy is to apply for an injunction against the officer in possession⁸. An election duly entered on cannot be stopped⁹; nor can it be proceeded with or declared in the absence of the presiding officer required by the constitution¹⁰, although an election will not be rendered invalid by reason of the substitution of one presiding officer for another, or the dismissal of unnecessary poll clerks¹¹.

1 *Powell v R* (1728) 2 Bro Parl Cas 298, HL.

2 *Newling v Francis* (1789) 3 Term Rep 189. As to byelaws see PARA 1187 et seq post.

3 *R v Bumstead* (1831) 2 B & Ad 699.

4 *R v Dublin Corp* (1826) Batt 628.

5 *R v Player* (1819) 2 B & Ald 707; *R v Monday* (1777) 2 Cowp 530.

6 *R v Brightwell* (1839) 10 Ad & El 171 at 176; *R v D'Oyly, R v Hedger* (1840) 12 Ad & El 139 at 157 per Lord Denman CJ.

7 *R v Cambridge Corp* (1767) 4 Burr 2008 at 2010; *R v Bankes* (1764) 3 Burr 1452 at 1454; *Re Barnes Corp*, ex p *Hutter* [1933] 1 KB 668.

8 *R v Colchester Corp* (1788) 2 Term Rep 259; and see PARA 1079 ante.

9 *R v Foxcroft* (1760) 2 Burr 1017 at 1020.

10 *R v Williams* (1813) 2 M & S 141.

11 *R v London Corp* (1829) 9 B & C 1.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(3) ELECTION OF MEMBERS AND OFFICERS/1184. Validity of election.

1184. Validity of election.

An elected person is not bound to inquire into the qualification of an elector apparently entitled to vote¹. The right of a member to vote at an election cannot be tried on an issue as to the validity of that election, but only on proper proceedings in ouster against the member whose right is questioned².

An elector will not be allowed to impeach a title conferred by an election in which he has concurred, or the titles of those mediately or immediately derived from that election, unless he can prove that the ground on which he bases his impeachment was unknown to him at the time of the election³.

As corporations constituted for public purposes or for trade are governed by the ordinary laws of the realm, the courts may examine and adjudicate on, inter alia, the validity of the execution of their elections⁴. A corporation, or a select body within it, may have a right to try and determine the validity of an election to a corporate office within it without thereby ousting the jurisdiction of the ordinary courts of the realm⁵.

Ecclesiastical and eleemosynary corporations, whether aggregate or sole, are usually subject to the control of a visitor, or person specially appointed or constituted to inquire into and correct any irregularity which may arise in respect of such corporations⁶.

1 *Symmers v R* (1776) 2 Cowp 489 at 503; *R v Hughes* (1825) 4 B & C 368.

2 *Symmers v R* (1776) 2 Cowp 489 at 507.

3 *R v Slythe* (1827) 6 B & C 240.

4 See PARA 1186 post.

5 *R v London Corp'n* (1829) 9 B & C 1.

6 As to visitation and the extent to which decisions of the visitor are open to review see PARA 1186 post. For the meaning of 'corporation aggregate' see PARA 1109 ante. For the meaning of 'corporation sole' see PARA 1111 ante.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(4) REGULATION/(i) In general/1185. Rules of governance.

(4) REGULATION

(i) In general

1185. Rules of governance.

In matters of internal government a private corporation, that is to say a corporation whose object is private charity and the like, although subject to the general laws of the realm, is governed by the private rules and regulations laid down by its founder¹, whereas it has been said that a public corporation is, as a rule, governed by the ordinary law².

Where the constitution of a corporation is a charter or Act of Parliament, the charter or Act, or instruments made by virtue of the Act, may contain the requisite rules and regulations, and these may be either imperative or directory³.

Where a corporation is competent itself to rectify an irregularity in the management of its internal affairs, the courts will not, as a rule, interfere to compel rectification⁴.

1 *Bentley v Bishop of Ely* (1726) Fortes Rep 298 at 299; revsd without reference to this point sub nom *Bishop of Ely v Bentley* (1732) 2 Bro Parl Cas 220, HL. The founder of a corporation is he who gives to it its first possessions. If the Sovereign and a subject give possessions to a corporation at the same time, the Sovereign alone is its founder by virtue of her prerogative: 1 Roll Abr 514. Where the Crown is founder and has conferred byelaws or statutes for the government of the corporation, a breach of those byelaws or statutes does not

constitute a crime or offence against the Crown: *Bentley v Bishop of Ely* supra. See also CHARITIES vol 8 (2010) PARA 229 et seq.

2 See note 1 supra.

3 *Foss v Harbottle* (1843) 2 Hare 461 at 495; and see PARA 1129 note 1 ante. Such instances are to be distinguished from those where, substantially, the conduct of the business which the corporation was incorporated to transact is governed by rules made by virtue of statute: see eg the Public Trustee Rules 1912, SR & O 1912/348 (as amended); and TRUSTS vol 48 (2007 Reissue) PARA 766 et seq.

4 *Browne v La Trinidad* (1887) 37 ChD 1 at 17, CA, per Lindley LJ. See also COMPANIES vol 14 (2009) PARA 464.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(4) REGULATION/(i) In general/1186. Adjudication of internal irregularities.

1186. Adjudication of internal irregularities.

Corporations constituted for public purposes or for trade are governed by the ordinary laws of the realm, and the court may examine and adjudicate on the validity of any private regulations or constitutions or the execution thereof by such a corporation¹; they are also subject to the control of various government departments. Ecclesiastical and eleemosynary corporations, whether aggregate or sole, are usually subject to the control of a visitor, or person specially appointed or constituted to inquire into and correct any irregularity which may arise in respect of such corporations², as, for example, in cases of amotion³; and the ordinary courts will not inquire into the validity of the domestic laws and regulations laid down by the founder or other authority⁴, though they have the power to determine whether the visitor has acted within the scope of his jurisdiction⁵, and will prohibit the exercise of visitatorial powers by a person having no jurisdiction to exercise them⁶.

The visitatorial jurisdiction stems from the power recognised by the common law in the founder of an eleemosynary corporation to provide the internal laws under which the object of his charity was to be governed and to be sole judge of the interpretation and application of those laws either by himself or by such person as he should appoint as a visitor. A dispute is within the visitor's exclusive jurisdiction if it involves questions relating to the internal laws of the foundation or rights and duties derived from such internal laws⁷. Conversely, an issue which turns on the enforcement of or adjudications on terms entered into between employee and employer, notwithstanding that they may also be in the relationship of member and corporation, and which involves no enforcement of or adjudication concerning the internal laws of the foundation, is ultra vires the visitor's authority⁸. A visitor has power to order payment of arrears of salary or compensation for wrongful dismissal⁹. The decision of a visitor acting within his jurisdiction is not amenable to challenge by judicial review on the ground of fact or law contained in the decision¹⁰. However, judicial review will lie against a visitor if he acts outside his jurisdiction or if he abuses his power in a manner wholly incompatible with his judicial role or acts in breach of the rules of natural justice¹¹.

1 *Philips v Bury* (1694) as reported in 2 Term Rep 346 at 352; *R v Bishop of Ely* (1788) 2 Term Rep 290 at 335. See PARA 1185 ante.

2 1 Bl Com 467 et seq. As to the visitatorial power in relation to universities and colleges see EDUCATION vol 15(2) (2006 Reissue) PARA 656. See also CHARITIES vol 8 (2010) PARA 510 et seq. See eg the Higher Education Act 2004 s 46 (exclusion of visitor's jurisdiction in relation to staff disputes). For the meaning of 'corporation aggregate' see PARA 1109 ante. For the meaning of 'corporation sole' see PARA 1111 ante.

3 *R v Dean and Chapter of Chester* (1850) 15 QB 513. As to amotion see PARA 1163 et seq ante.

4 *Philips v Bury* (1694) 2 Term Rep 346; *R v Bishop of Ely* (1788) 2 Term Rep 290; *R v Dean and Chapter of Chester* (1850) 15 QB 513.

5 *Grattan v Lendrick* (1829) 2 Hud & B 409 at 420, 422 per Burton J.

6 *Master of St John's College, Cambridge v Todington* (1757) 1 Burr 158 at 193 per Lord Mansfield CJ; *Whiston v Dean and Chapter of Rochester* (1849) 7 Hare 532 at 558. See also CHARITIES vol 8 (2010) PARA 524 et seq. While the visitor should make the relevant decision, there is nothing to prevent him from appointing a competent person to advise him: *R (on the application of Varma) v HRH Duke of Kent* (2004) EWHC 1705 (Admin).

7 *Thomas v University of Bradford* [1987] AC 795, [1987] 1 All ER 834, HL; *R v Hertford College, Oxford* (1878) 3 QBD 693, CA; *R v Dunsheath, ex p Meredith* [1951] 1 KB 127, [1950] 2 All ER 741, DC; *Thorne v University of London* [1966] 2 QB 237, [1966] 2 All ER 338, CA; *Patel v University of Bradford Senate* [1979] 2 All ER 582, [1979] 1 WLR 1066, CA; *Re Wislang's Application* [1984] NI 63, NI HC; *Hines v Birkbeck College* [1986] Ch 524, [1985] 3 All ER 156 (affd [1987] Ch 457n, [1987] 3 All ER 1040n, CA); *Oakes v Sidney Sussex College, Cambridge* [1988] 1 All ER 1004, [1988] 1 WLR 431; *R v HM the Queen in Council, ex p Vijayatunga* [1990] 2 QB 444, sub nom *R v University of London Visitor, ex p Vijayatunga* [1989] 2 All ER 843, CA.

8 *Thomas v University of Bradford* [1987] AC 795, [1987] 1 All ER 834, HL.

9 *Thomas v University of Bradford* [1987] AC 795 at 823-824, 828, [1987] 1 All ER 834 at 849, 852-853, HL.

10 *R v Lord President of the Privy Council, ex p Page* [1993] AC 682, sub nom *Page v Hull University Visitor* [1993] 1 All ER 97, HL; *R v Visitors to the Inns of Court, ex p Calder*, *R v Visitors to the Inns of Court, ex p Persaud* [1994] QB 1, [1993] 2 All ER 876, CA.

11 *R v Lord President of the Privy Council, ex p Page* [1993] AC 682, sub nom *Page v Hull University Visitor* [1993] 1 All ER 97, HL.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(4) REGULATION/(i) In general/1187. Byelaws.

1187. Byelaws.

All regulations made by a corporation and intended to bind not only itself and its officers and servants, but members of the public who come within the sphere of their operation, may properly be called 'byelaws', whether they are valid or invalid in point of law¹; but the term may also be applied to regulations binding only on the corporation, its officers and servants².

1 *London Association of Shipowners and Brokers v London and India Docks Joint Committee* [1892] 3 Ch 242 at 252, CA, per Lindley LJ; *A-G v Belfast Corpn* [1898] 1 IR 200 at 217; *Hopkins v Swansea Corpn* (1839) 4 M & W 621 at 630 per Lord Abinger CB (affd sub nom *Swansea Corpn v Hopkins* (1841) 8 M & W 901). See also PARA 1188 post.

2 *London Association of Shipowners and Brokers v London and India Docks Joint Committee* [1892] 3 Ch 242, CA.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(4) REGULATION/(ii) Power to make Byelaws/1188. Extent of power.

(ii) Power to make Byelaws

1188. Extent of power.

The power to make byelaws may be contained in the charter or in statute¹. Every corporation has the power to make byelaws relative to the purposes for which it is constituted². Such byelaws do not, however, bind persons other than members³, unless they are made under

statutory authority⁴, or unless it is shown that they have been brought to the knowledge of the person sought to be bound by them⁵, and that he has agreed to be so bound⁶. Power to make byelaws binding on persons using an undertaking conducted by the corporation has in some cases been conferred by statute⁷.

1 See *R (on the application of Mahmood) v Royal Pharmaceutical Society of Great Britain* [2001] EWCA Civ 1245, [2002] 1 WLR 879 (where express provision had been made in an Act of Parliament for the making of byelaws for the purposes of any provision in that Act, it was not open to the corporation to exercise the power in the charter to make byelaws which could not be made under the power in the Act).

2 *Norris v Staps* (1616) Hob 210 per Hobart CJ; *R v Westwood* (1830) 4 Bli NS 213 at 225, HL, per Parker J, at 251 per Gaselee J, and at 263 per Littledale J; *Chilton v London and Croydon Rly Co* (1847) 16 M & W 212 at 228 per Parker B. As to the power of district councils and London borough councils to make byelaws for the good rule and government of the district or borough and for the prevention and suppression of nuisances therein see the Local Government Act 1972 s 235 (as amended); and LOCAL GOVERNMENT vol 69 (2009) PARA 555.

3 *Cudden v Eastwick* (1704) 6 Mod Rep 123 at 124; cf *Child v Hudson's Bay Co* (1723) 2 P Wms 207. Formerly a corporation might make ordinances or constitutions by custom or royal charter for things which concern the public good, such as repair of the church or common highways, or the like: *Chamberlain of London's Case* (1590) 5 Co Rep 62b at 63a. By prescription, clearly proved, an ancient corporation might make byelaws binding on others than those of its own body: *Dodwell v Oxford University* (1680) 2 Vent 33. Thus a corporation constituted by royal charter might, by special power in the charter, make byelaws binding on all persons carrying on a particular trade within a particular locality, notwithstanding that some of them might not belong to the corporation: *Butchers' Co v Morey* (1790) 1 Hy Bl 370. No byelaw could, however, be binding outside the jurisdiction created or allowed by the constitution: *Horners Co v Barlow* (1688) 3 Mod Rep 159.

4 *River Tone Conservators v Ash* (1829) 10 B & C 349 at 379.

5 *Re Asiatic Banking Corpn, Royal Bank of India's Case* (1869) 4 Ch App 252.

6 *London Association of Shipowners and Brokers v London and India Docks Joint Committee* [1892] 3 Ch 242 at 255, CA, per Lindley LJ.

7 See eg the Airports Act 1986 s 63 (as amended); and AIR LAW vol 2 (2008) PARA 322.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(4) REGULATION/(ii) Power to make Byelaws/1189. Exercise of power.

1189. Exercise of power.

The power to make byelaws, either by the body at large or by a select part, is incident to every corporation¹. The power is prima facie to be exercised by the corporation at large². If the power is given by a charter to a select body, it is only an abridgement pro tanto of the powers incidental to the whole body, so that all powers not expressly conferred on the select body remain vested in the whole body; they are not abrogated by implication³. Where the power of making byelaws is in the body at large, it may delegate the right to a select body, who will then become the representative of the whole community⁴.

1 *Feltmakers' Co v Davis* (1797) 1 Bos & P 98 at 100; cf *Hills v Hunt* (1854) 15 CB 1.

2 *R v Westwood* (1830) 4 Bli NS 213, HL.

3 *R v Westwood* (1830) 4 Bli NS 213, HL.

4 *R v Spencer* (1766) 3 Burr 1827 at 1837.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(4) REGULATION/(ii) Power to make Byelaws/1190. Time of making.

1190. Time of making.

Where the corporation's constitution gives power to make byelaws for the maintenance and government of the corporation, such byelaws may be made at any time and from time to time after incorporation¹. Every byelaw may be altered or repealed by the corporation making it², or by Act of Parliament³.

1 *R v Dulwich College* (1851) 17 QB 600 at 628.

2 *R v Ashwell* (1810) 12 East 22 at 29 per Lord Ellenborough CJ; cf *A-G v Middleton* (1751) 2 Ves Sen 327.

3 1 Roll Abr 363. For an early example of an Act abrogating a byelaw see 12 Hen 7 c 6 (Merchant Adventurers) (1496) (repealed). As to the position of the founder of a corporation where he has not expressly reserved the power to alter its constitution see *Philips v Bury* (1694) Skin 447 at 513.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(4) REGULATION/(iii) Validity of Byelaws/1191. Making and confirmation.

(iii) Validity of Byelaws

1191. Making and confirmation.

Where the constitution of a corporation provides for the making of byelaws according to a certain form, and in a particular manner, the provisions of the constitution must be followed¹; and, if the byelaws are required to be confirmed by some external authority, the confirmation must be obtained, as otherwise their validity will depend entirely on agreement². The confirmation of a byelaw by the confirming authority will not, however, make it valid, if it is otherwise invalid³.

A byelaw is always deemed to have been made with the knowledge and consent of every member of the corporation. No member may plead ignorance of a byelaw⁴, or allege that the corporation has no power to make or enforce a byelaw which was in existence at the time when he became a member or officer⁵.

When a byelaw is made under an Act of Parliament, the repeal of the Act abrogates it unless it is preserved by some provision in the repealing Act⁶.

1 *Dunston v Imperial Gas Light Co* (1831) 3 B & Ad 125.

2 *London Association of Shipowners and Brokers v London and India Docks Joint Committee* [1892] 3 Ch 242, CA.

3 *Elwood v Bullock* (1844) 6 QB 383; *R v Wood* (1855) 5 E & B 49.

4 *Master etc of Trinity House v Crispin* (1681) T Jo 144; and see *R v Trevenen* (1819) 2 B & Ald 339; *Vintners' Co v Passey* (1757) 1 Burr 235 at 239.

5 *Piper v Chappell* (1845) 14 M & W 624 at 640; but see PARA 1200 text and note 6 post.

6 *Watson v Winch* [1916] 1 KB 688.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(4) REGULATION/(iii) Validity of Byelaws/1192. Ultra vires.

1192. Ultra vires.

In testing the validity of a byelaw, regard must be had to the intention of the founder or creating authority as expressed in the constitution of the corporation¹. A byelaw must not be opposed to the constitution of the particular corporation², nor may it be made the means of remedying a defect therein³. A corporation may, however, by custom have power to make a byelaw providing a fit remedy in case any ancient custom is hard or defective⁴.

A byelaw cannot explain a charter; and, although it may lessen or enforce the powers given to the corporation, it cannot increase them⁵.

If a member of a corporation who has acted as such brings a claim for infringement of a byelaw, he may not dispute the acceptance of the charter of incorporation by a majority of those intended to be incorporated⁶.

1 *R v Ginever* (1796) 6 Term Rep 732 at 736. See also the judgments in *Smith v Great Yarmouth Port and Haven Comrs* (1919) 88 LJKB 1190.

2 *R v Bumstead* (1831) 2 B & Ad 699; *R v Cutbush* (1768) 4 Burr 2204; *Hoblyn v R* (1772) 2 Bro Parl Cas 329, HL; *Bentham v Hoyle* (1878) 3 QBD 289. Thus, where the constitution gave to certain persons a power to exercise their reasonable discretion in a matter affecting the objects for which the corporation was founded, a byelaw attempting to abridge that power was held bad as being an attempt to alter the constitution: *R v Governors of Darlington School* (1844) 6 QB 682 at 717, Ex Ch. As to byelaws regulating the election of members and officers see PARA 1176 et seq ante.

3 Where the constitution makes no provision for the case of an equal number of votes being cast at a corporate meeting for and against a resolution submitted to it, a byelaw cannot confer a casting vote on any one present at the meeting: *R v Ginever* (1796) 6 Term Rep 732. As to voting procedures see PARAS 1219-1222 post.

4 *Clark v Denton* (1830) 1 B & Ad 92.

5 *R v Weymouth Corp* (1741) 7 Mod Rep 373; affd sub nom *Tucker v R* (1742) 2 Bro Parl Cas 304, HL.

6 *London Tobacco Pipe Makers' Co v Woodroffe* (1828) 7 B & C 838.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(4) REGULATION/(iii) Validity of Byelaws/1193. Reasonableness.

1193. Reasonableness.

A byelaw must be reasonable¹, and, in determining the reasonableness of a byelaw, it is material to consider the relation of its framers to the locality² or the person affected by it³. The byelaw impeached may be explained and supported by other byelaws⁴; and the fact that it has long been in existence is evidence that it is not intrinsically inconvenient⁵.

In the following instances⁶ byelaws of private corporations have been held to be bad for failing to meet the requirement of reasonableness:

- 21 (1) a byelaw disqualifying candidates for office if they had ever been bankrupt or insolvent⁷;

- 22 (2) a byelaw imposing a tax on members for general or indefinite purposes without there being any necessity for it⁸;
- 23 (3) a byelaw not necessary or calculated to further the interests of the corporation at large⁹.

Byelaws made by corporations of a public representative character, entrusted by Parliament with delegated authority, ought to be interpreted benevolently and supported, if possible¹⁰; but those made by corporations of a more private character¹¹ will be jealously watched lest they should work to the public disadvantage¹².

1 As to the test of reasonableness in relation to local authority byelaws see LOCAL GOVERNMENT vol 69 (2009) PARA 546.

2 This consideration is relevant primarily, if not solely, in the case of corporations which have local administrative functions.

3 *Slattery v Naylor* (1888) 13 App Cas 446 at 452, PC; *Kruse v Johnson* [1898] 2 QB 91 at 96, DC, per Lord Russell CJ.

4 *London Tobacco Pipe Makers' Co v Woodroffe* (1828) 7 B & C 838.

5 *R v Ashwell* (1810) 12 East 22 at 29 (existence for 230 years).

6 See also PARA 1194 text and note 7 post.

7 *R v Saddlers' Co* (1860) 3 E & E 42; on appeal (1863) 10 HL Cas 404.

8 *London Tobacco Pipe Makers' Co v Woodroffe* (1828) 7 B & C 838 at 853.

9 *Scriveners' Co v Brooking* (1842) 3 QB 95 (provision of a dinner).

10 See *Kruse v Johnson* [1898] 2 QB 91 at 99, DC, per Lord Russell CJ.

11 Lord Russell CJ instanced railway companies, dock companies and others, which carried on their business for their own profit, although incidentally for the advantage of the public: *Kruse v Johnson* [1898] 2 QB 91 at 99, DC.

12 *Kruse v Johnson* [1898] 2 QB 91 at 99, DC, per Lord Russell CJ.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(4) REGULATION/(iii) Validity of Byelaws/1194. Repugnancy.

1194. Repugnancy.

A byelaw must not be repugnant to the general law¹. It is not repugnant merely because it supplements the general law and deals with something which is not dealt with by the general law²; but a byelaw will be repugnant if it deals precisely with a matter with which Parliament has already dealt in an Act addressed to the very same object³. A byelaw cannot alter the general law, either expressly or by necessary implication⁴, by making lawful that which the general law makes unlawful, or unlawful that which the general law makes lawful⁵. Where an Act of Parliament prohibits certain actions, subject to exceptions, the Act may be regarded as impliedly authorising the doing of those excepted things and a byelaw prohibiting them may, therefore, be repugnant to the general law⁶. Where the corporators are in a fiduciary position, a byelaw made by them which will put them in a position in which there will be a conflict between interest and duty, as, for example, by allowing them to charge for their services, will be repugnant to law⁷. A byelaw will be void if it is repugnant to the corporation's charter⁸.

1 *Norris v Staps* (1616) Hob 210; *Bentham v Hoyle* (1878) 3 QBD 289; *White v Morley* [1899] 2 QB 34 at 39 per Channell J; *Gentel v Rapps* [1902] 1 KB 160 at 166; and see LOCAL GOVERNMENT vol 69 (2009) PARA 562.

It was declared by statute in 1503 that no masters, wardens and fellowships of crafts or mysteries, nor any rulers of guilds or fraternities, should take on them to make any acts or ordinances, or to execute any acts or ordinances by them theretofore made, in disheritance or diminution of the prerogative of the Crown or of others, or against the common profit of the people; but that the same acts or ordinances should be examined and approved by the Chancellor, Treasurer, and Chief Justices of either bench or three of them, or by the justices of assize in the circuit where the acts or ordinances were made, on pain of forfeiting £40 every time that they should do to the contrary: Ordinances of Corporations Act 1503 s 1 (now repealed); and see PARA 1307 post. The statute did not confirm any byelaws so made, but left them to be dealt with by the courts as occasion required on their merits. All that the statute did in the case of byelaws examined and approved under it was to relieve corporations from the penalty which they might otherwise incur in consequence of their putting into force any byelaw against the royal prerogative: *Ipswich Tailors' Case* (1614) 11 Co Rep 53a at 54b. In other words, the statute did not give validity to byelaws not otherwise legal: *Kruse v Johnson* [1898] 2 QB 91 at 108, DC, per Mathew J.

2 *White v Morley* [1899] 2 QB 34 at 39 per Channell J; *Gentel v Rapps* [1902] 1 KB 160 at 166. See also *Aldred v Miller* 1925 JC 21.

3 *Strickland v Hayes* [1896] 1 QB 290, DC, as explained in *Thomas v Sutters* [1900] 1 Ch 10 at 14, CA, per Lindley MR.

4 *Gentel v Rapps* [1902] 1 KB 160 at 161 per Channell J.

5 *Gentel v Rapps* [1902] 1 KB 160; *White v Morley* [1899] 2 QB 34.

6 *Powell v May* [1946] KB 330 at 335, [1946] 1 All ER 444 at 445-446, DC, per Lord Goddard CJ.

7 *Re French Protestant Hospital* [1951] Ch 567, [1951] 1 All ER 938 (where the charter forbade the making of byelaws which were repugnant to law and required byelaws to be reasonable; the byelaw in question was held to be both repugnant to law and unreasonable).

8 See PARA 1192 ante.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(4) REGULATION/(iii) Validity of Byelaws/1195. Certainty; construction.

1195. Certainty; construction.

A byelaw must be certain, that is to say it must contain adequate information as to the duties of those who are to obey¹.

Where a byelaw is capable of two constructions, one of which would make it invalid and the other good, the latter construction will prevail².

A byelaw which is void in part is void altogether³, except when the void part can be severed from that which is good, and the latter can be enforced independently⁴.

1 *Kruse v Johnson* [1898] 2 QB 91 at 108, DC, per Mathew J; and see LOCAL GOVERNMENT vol 69 (2009) PARA 563.

2 *Collman v Mills* [1897] 1 QB 396 at 399 per Wills J; *R v Saddlers' Co* (1863) 10 HL Cas 404 at 463 per Lord Wensleydale; cf *Poulterers' Co v Phillips* (1840) 6 Bing NC 314; *London Tobacco Pipe Makers' Co v Woodroffe* (1828) 7 B & C 838.

3 Com Dig, Byelaw, C7; *Colchester Corp'n v Goodwin* (1667) Cart 114 at 121; *Clarke v Tucket* (1690) 2 Vent 182; *R v Attwood* (1833) 4 B & Ad 481; *Elwood v Bullock* (1844) 6 QB 383. It is doubtful whether a byelaw which imposes a regulation (eg the payment of a fee or penalty) in excess of a similar statutory regulation will be valid as to the excess, unless expressly authorised by Act of Parliament: *Eagleton v East India Co* (1802) 3 Bos & P 55.

4 *R v Lundie* (1862) 31 LJMC 157; *R v Faversham Fishermen's Co* (1799) 8 Term Rep 352; *R v Coopers' Co, Newcastle* (1798) 7 Term Rep 543 at 549 per Lawrence J; *Clark v Denton* (1830) 1 B & Ad 92 at 95 per Bayley J. See also *Smith v Great Yarmouth Port and Haven Comrs* (1919) 88 LJB 1190 at 1192 per Darling J.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(4) REGULATION/(iii) Validity of Byelaws/1196. Restraint of trade.

1196. Restraint of trade.

A power to make byelaws for the regulation of trade may be given by statute. A power, expressed as a power to regulate or govern trade, will not, however, confer or imply a power to prohibit or prevent trade, unless the statute clearly shows an intention that a power to prohibit trade is included¹. Byelaws which cramp and harass trade are void², but byelaws are not void merely because they regulate trade, even though they involve a partial restraint³. Provisions in restraint of trade which are contained in a professional code of conduct established by a corporation incorporated by charter will be invalid if they are not reasonably necessary to achieve the objects of the corporation⁴.

1 *City of Toronto Municipal Corp'n v Virgo* [1896] AC 88, PC; *A-G for Ontario v A-G for the Dominion* [1896] AC 348 at 363, PC. See further LOCAL GOVERNMENT vol 69 (2009) PARA 565. A byelaw in restraint of trade which affects trade between member states may be void under the provisions of the Treaty establishing the European Economic Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) (the 'EC Treaty') art 81 (formerly art 85, and renumbered by the Treaty of Amsterdam: see *Treaty Citation (No 2) (Note)* [1999] All ER (EC) 646, ECJ); and the Treaty on European Union (Maastricht, 7 February 1992; Cm 1934) art 8 (formerly Title II art G, renumbered by the Treaty of Amsterdam).

2 *Mitchell v Reynolds* (1711) 10 Mod Rep 130 at 131; *R v Coopers' Co, Newcastle* (1798) 7 Term Rep 543.

3 *Scott v Glasgow Corp'n* [1899] AC 470, HL.

4 *Pharmaceutical Society of Great Britain v Dickson* [1970] AC 403, [1968] 2 All ER 686, HL.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(4) REGULATION/(iv) Proof of Byelaws; Usage/1197. Evidence.

(iv) Proof of Byelaws; Usage

1197. Evidence.

The books of a corporation are evidence of the existence of byelaws registered therein, even as against strangers¹.

Where a corporation sues a person who is not a corporator on a byelaw which affects persons within a particular district other than members of the corporation, it cannot refuse to allow him inspection of the byelaw on the plea that he is not a member of the corporation²; but he will be allowed inspection only on payment of a reasonable sum for the attendance of the officer of the corporation to produce the books³.

1 Grant, Law of Corporations 90. Byelaws of a local authority may be proved by production of a copy indorsed with a certificate signed by the proper officer: see the Local Government Act 1972 s 238 (as amended); and LOCAL GOVERNMENT vol 69 (2009) PARA 568. Corresponding provision is commonly made in relation

to the byelaws of statutory authorities: see eg the Airports Act 1986 s 63(5), Sch 3 para 8; and AIR LAW vol 2 (2008) PARA 322.

2 *Harrison v Williams* (1824) 3 B & C 162.

3 *Harrison v Williams* (1824) 3 B & C 162 at 164.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(4) REGULATION/(iv) Proof of Byelaws; Usage/1198. Usage.

1198. Usage.

Where there is proof of very ancient usage in relation to the internal government of a corporation, the court will presume a byelaw, or any other legal origin, to support such usage¹.

Ancient usage and custom do not necessarily import immemoriality, but such considerable antiquity that the time during which it has prevailed may be evidence of its being reasonable². Usage will not be considered as evidence of a byelaw if it is contrary to the charter³, nor will evidence of usage in contravention of a byelaw be admitted⁴. At common law declarations of deceased corporators were, it seems, admissible in evidence to prove usage⁵.

The question of the validity or invalidity of an alleged usage will be determined according to the same rules of law as are applicable to the case of byelaws⁶. Thus a usage repugnant to, or inconsistent with, a charter which has been accepted by the corporation cannot continue after such acceptance⁷.

1 *R v Powell* (1854) 3 E & B 377 at 389 per Coleridge J (where there was evidence of the usage for 400 years). As to usage regulating the election of members and officers see PARA 1175 et seq ante. Where the invariable usage of a corporation by prescription had been never to proceed to a corporate act except on due notice being given for the purpose, an act done without such notice was held to have been void: *Machell v Nevinston* (1724) 2 Ld Raym 1355. As to usage generally see CUSTOM AND USAGE.

2 *R v Sheriffs of York* (1832) 3 B & Ad 770 at 777 per Lord Tenterden CJ. Usage for 60 years has been held sufficient evidence on which the court might presume a byelaw: Grant, Law of Corporations 91. Uniform usage for 40 years unopposed by evidence to the contrary has been held to be evidence of a prescriptive right, and to imply a charter conferring such right: *R v Hoyte* (1795) 6 Term Rep 430.

3 *R v Tucker* (1727) 1 Barn KB 26.

4 *Sills v Brown* (1840) 9 C & P 601 at 604.

5 *Davies v Morgan* (1831) 1 Tyr 457. As to the general admissibility of statements made out of court as evidence of facts stated see the Civil Evidence Act 1995 s 1; and CIVIL PROCEDURE vol 11 (2009) PARA 808 et seq.

6 See PARA 1086 et seq ante.

7 *R v Salway* (1829) 9 B & C 424 at 435 per Lord Tenterden CJ.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(4) REGULATION/(v) Penalties/1199. Inflicting penalties.

(v) Penalties

1199. Inflicting penalties.

A power to inflict penalties to enforce byelaws is incidental to a corporation, without any special power being given¹. There can be no action for breach of a byelaw which inflicts no penalty for such a breach².

A corporation, by means of a byelaw, may inflict a penalty on any person guilty of a breach of it, if the offence is committed within the jurisdiction of the corporation, and the sum payable is competent and proportionable to the offence, and is otherwise in accordance with the law³.

The payment of a penalty cannot be directed to be made to a stranger to the corporation⁴; it must be made either to the corporate body itself, or to the proper officers of the corporation whose duty it is to receive such money, as, for example, the master and wardens of the corporation in their official capacity, or to some other person or persons not strangers to the corporation⁵.

1 *City of London v Wood* (1701) 12 Mod Rep 669 at 686.

2 *Workingham Corpn v Johnson* (1736) Lee temp Hard 284.

3 *Chamberlain of London's Case* (1590) 5 Co Rep 62b at 63b. As to repugnancy of byelaws see PARA 1194 ante.

4 *Bodwic v Fennell* (1748) 1 Wils 233.

5 *Graves v Colby* (1838) 9 Ad & El 356 at 366 per Lord Denman CJ.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(4) REGULATION/(v) Penalties/1200. Enforcement of penalty.

1200. Enforcement of penalty.

A byelaw may direct that a reasonable penalty may be enforced by action¹, but not without previous demand and refusal to pay². A corporation cannot make a byelaw to have a forfeiture levied by the sale of goods or for a forfeiture of goods³, unless expressly empowered to do so by Act of Parliament⁴.

Where a penalty is inflicted under a byelaw, the ordinary legal method of recovering it must be resorted to, if necessary. A byelaw declaring that, pending the payment of the penalty, the member who has incurred it shall be deprived of all participation in the profits or benefits of the corporation is void⁵. A corporation cannot make a byelaw inflicting imprisonment as a penalty⁶.

Where a byelaw is framed, not for the benefit of the corporation, but for the benefit of the public, the corporation cannot dispense with the enforcement of the byelaw⁷.

1 *Clark's Case* (1596) 5 Co Rep 64a.

2 *Davies v Morgan* (1831) 1 Cr & J 587; *Butchers' Co v Bullock* (1803) 3 Bos & P 434. In *Clark's Case* (1596) 5 Co Rep 64a, it was suggested that a corporation might enforce a penalty by distress, but it is unlikely that such power now exists in any corporation.

3 *Clarke v Tucket* (1690) 2 Vent 182.

4 *Kirk v Nowill* (1786) 1 Term Rep 118.

5 *Adley v Reeves* (1813) 2 M & S 53. Such a byelaw might possibly have been good if supported by ancient usage: see *Adley v Reeves* supra.

6 *Clark's Case* (1596) 5 Co Rep 64a (where the prisoner had himself assented, as a member of the corporation, to the making of the byelaw).

7 *Re McIntosh and Pontypridd Improvements Co* (1891) 8 TLR 128, followed and approved in *Yabbicom v King* [1899] 1 QB 444; *William Bean & Sons v Flaxton RDC* [1929] 1 KB 450, CA.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(5) MEETINGS OF THE CORPORATION/(i) Convening of Meetings/1201. Necessity for notice.

(5) MEETINGS OF THE CORPORATION

(i) Convening of Meetings

1201. Necessity for notice.

A corporation may do corporate acts only at a corporate meeting, unless a special method is authorised by the constitution¹. To be duly constituted a corporate meeting must be convened by the proper authority², and must be held on notice which gives every member of the corporation entitled to attend an opportunity of attending³, unless it is held on the charter day⁴. A corporate meeting may be valid where notice of it has not been given, provided that all members of the corporation are present and consent to the meeting being held⁵.

Where no specific day is fixed by the constitution and the object for which the meeting is required may be carried out at a meeting held at any time, it is essential that notice of the meeting and of the business to be transacted should be given to all persons entitled to participate⁶. If a member whom it is reasonably possible to summon is not summoned, the meeting will not be duly convened⁷, even though the omission is accidental⁸ or due to the fact that the member has informed the officer whose duty it is to serve notice that he need not serve notice on him⁹. A member who is out of reach need not be served with notice¹⁰.

1 *River Tone Conservators v Ash* (1829) 10 B & C 349 at 378; *R v Varlo* (1775) 1 Cowp 248.

2 *Re State of Wyoming Syndicate* [1901] 2 Ch 431; *Re Haycraft Gold Reduction and Mining Co* [1900] 2 Ch 230; *Patent Wood Keg Syndicate v Pearse* (1906) 50 Sol Jo 650. It is, however, competent for the proper authority to ratify an irregular summoning of a meeting: *Hooper v Kerr, Stuart & Co Ltd* (1900) 83 LT 729. As to the manner in which company meetings are convened see COMPANIES vol 14 (2009) PARA 632 et seq.

3 *Mayor etc & Co of Merchants of the Staple of England v Governor and Co of Bank of England* (1887) 21 QBD 160 at 165, CA, per Wills J. See also PARA 1202 text and note 3 post.

4 For the meaning of 'charter day' see PARA 1202 post.

5 *Musgrave v Nevinston* (1724) 2 Ld Raym 1358 (where the meeting was for an election).

6 *R v Hill* (1825) 4 B & C 426 at 441 per Bayley J (notice to be given to all persons resident within the limits of the borough and entitled to vote). It seems that notice must not only be given but received: *Leary v National Union of Vehicle Builders* [1971] Ch 34 at 53, [1970] 2 All ER 713 at 723 per Megarry J.

7 *R v Shrewsbury Corpn* (1736) Lee temp Hard 147 at 150 (every member to be summoned except such as were absolutely removed from and had deserted the town); *Smyth v Darley* (1849) 2 HL Cas 789.

8 *R v Langhorn* (1836) 4 Ad & El 538; and see *Godmanchester Corpn v Phillips* (1836) 4 Ad & El 550.

9 *R v Langhorn* (1836) 4 Ad & El 538; cf *Young v Ladies' Imperial Club* [1920] 2 KB 523, CA; and CLUBS vol 13 (2009) PARA 253.

10 *Nixon v Burt* (1817) 7 Taunt 682 at 685 per Gibbs CJ. As to notice in the case of a deceased member see *Allen v Gold Reefs of West Africa Ltd* [1899] 2 Ch 40 (on appeal [1900] 1 Ch 656, CA); the Companies (Tables A

to F) Regulations 1985, SI 1985/805, Schedule, Table A art 112 (as amended); and COMPANIES vol 14 (2009) PARA 324.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(5) MEETINGS OF THE CORPORATION/(i) Convening of Meetings/1202. Where notice unnecessary.

1202. Where notice unnecessary.

Where a corporate meeting is fixed, either by charter or custom, to take place on a specific day, generally called the charter day, every person entitled to participate at the meeting will be deemed to have notice that there is to be a meeting on that day¹. Hence it is unnecessary to give notice to the members of a corporation of the business intended to be brought forward on the charter day, since every member is then supposed to be present². Where corporate acts are to be done on a day other than the charter day, notice must be given to every member, so far as practicable³.

1 *R v Hill* (1825) 4 B & C 426 at 441 per Bayley J.

2 *R v Harris* (1831) 1 B & Ad 936 at 943 per Lord Tenterden CJ.

3 *R v Shrewsbury Corp*n (1736) Lee temp Hard 147 at 150; *R v Grimes* (1770) 5 Burr 2598 at 2601; *R v May* (1770) 5 Burr 2681; *Nixon v Burt* (1817) 7 Taunt 682 at 688; *R v Governors of Darlington School* (1844) 6 QB 682 at 707, Ex Ch, per Parke B; *R v Langhorn* (1836) 4 Ad & El 538; *Smyth v Darley* (1849) 2 HL Cas 789.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(5) MEETINGS OF THE CORPORATION/(i) Convening of Meetings/1203. Select body.

1203. Select body.

A select body within a corporation which is empowered to do certain acts for or on its behalf cannot act except on special summons for the particular matter to be done¹, unless all the members of the select body entitled to summons are present and all consent to the proceeding². A general summons addressed to the whole body is not sufficient³. Where, however, its function is merely to aid and assist the corporation as a whole when called on to do so, it cannot refuse to attend merely because it has not had sufficient notice of the specific purpose of attendance⁴. Similarly, where the power to elect is in an aggregate of select bodies and all the members of each select body are in fact present and agree that they will proceed to an election, the election will be good⁵. Again, where there has been a long and undisputed usage, on due warning to every member of the select body, to proceed to an election, although the special purpose of the meeting has not been previously intimated, it is probable that an election in such circumstances will be valid⁶.

1 *R v Liverpool Corp*n (1759) 2 Burr 723 at 731.

2 *R v Theodorick* (1807) 8 East 543.

3 *R v Carlisle Corp*n (1720) 1 Stra 385.

4 *R v Pulsford* (1828) 8 B & C 350.

5 *R v Chetwynd* (1828) 7 B & C 695.

6 *R v Chetwynd* (1828) 7 B & C 695 at 705 per Lord Tenterden CJ.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(5) MEETINGS OF THE CORPORATION/(i) Convening of Meetings/1204. Method of giving notice.

1204. Method of giving notice.

Where there is a usual method of giving notice¹ of a corporate meeting, that usual method cannot be dispensed with, nor can an act purported to be done at such a meeting be good without complying with the usual requirements, unless all the persons who have a right to notice are actually summoned and unanimously agree². Notice must, however, be given in a reasonable manner and at a reasonable time before the meeting takes place³.

It is probable that a notice that a meeting will be held only in certain events would be bad. The notice convening a meeting should state definitely that it will be held⁴, and must contain a sufficient statement of the facts which are to be considered by the corporators at the proposed meeting⁵.

Where notice is given that particular business will be transacted at a meeting, no other business can be embarked on at that meeting unless the whole body corporate is present and consents⁶.

1 Ie if the method of giving notice is not prescribed by the instruments constituting or governing the corporation.

2 *R v May* (1770) 5 Burr 2681 at 2683.

3 *R v Hill* (1825) 4 B & C 426 at 441 per Bayley J (where the ringing of a bell was held not to be a reasonable method of giving notice).

4 *Alexander v Simpson* (1889) 43 ChD 139, CA, distinguished in *Tiessen v Henderson* [1899] 1 Ch 861, and reluctantly accepted in *Re North of England Steamship Co* [1905] 2 Ch 15, CA (all these were cases of companies registered under the Companies Act 1862, which has been repealed). See, however, *Re Espuela Land and Cattle Co* (1900) 48 WR 684 (where the holding of a second meeting depended on the result of the first meeting, and a notice summoning the first meeting, giving notice of the second meeting and stating that due notice would be given if the second meeting would not be held, was held to be a valid notice of the second meeting).

5 *Peel v London and North Western Rly Co* [1907] 1 Ch 5 at 14, CA, per Vaughan Williams LJ. See also COMPANIES vol 15 (2009) PARA 1762.

6 *R v Wake* (1728) 1 Barn KB 80; *Machell v Nevinston* (1724) 11 East 84n; *Re British Sugar Refining Co, ex p Faris* (1857) 26 LJ Ch 369.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(5) MEETINGS OF THE CORPORATION/(ii) Quorum/1205. Presence of quorum necessary.

(ii) Quorum

1205. Presence of quorum necessary.

The acts of a corporation, other than a trading corporation, are those of the major part of the corporators, corporately assembled. In other words, in the absence of special custom or of special provision in the constitution, the major part must be present at the meeting, and of that major part there must be a majority in favour of the act or resolution contemplated¹. Where, therefore, a corporation consists of 13 members, there ought to be at least seven present to form a valid meeting, and the act of the majority of these seven or of a greater number will bind the corporation². In considering whether the requisite number is present, only those members who are competent to take part in the particular business before the meeting may be included³. The power of doing a corporate act may, however, be specially delegated to a particular number of members, in which case, in the absence of any other provision, the method of procedure applicable to the body at large will be applied to the select body⁴.

If a corporate act is to be done by a definite body alone, or by a definite body coupled with an indefinite body, a majority of the definite body must be present⁵.

Where a corporation is composed of several select bodies, the general rule is that a majority of each select body must be present at a corporate meeting; but this rule will not be applied in the absence of express direction in the constitution, if its application would lead to an absurdity or an impossibility. Thus where such a select body is composed of four members and two of them happen to vacate their offices at the same time, an election will be valid, even though only the remaining two are present at it⁶.

1 *Mayor etc & Co of Merchants of the Staple of England v Governor & Co of Bank of England* (1887) 21 QBD 160 at 165, CA, per Wills J. In general one person cannot constitute a meeting: *Sharp v Dawes* (1876) 2 QBD 26, CA; *Re London Flats Ltd* [1969] 2 All ER 744, [1969] 1 WLR 711. In certain circumstances, however, 'meeting' in the memorandum and articles of a company may be taken to have been used not in its strict sense but as applicable to a single shareholder: see *East v Bennett Bros Ltd* [1911] 1 Ch 163; and COMPANIES vol 14 (2009) PARA 647. Notwithstanding any provision to the contrary in the articles of a private company limited by shares or by guarantee having only one member, one member present in person or by proxy is a quorum: Companies Act 1985 s 370A (added by the Companies (Single Member Private Limited Companies) Regulations 1992, SI 1992/1699, reg 2(1)(b), Schedule para 5).

2 *Hascard v Somany* (1693) 1 Freem KB 504. Where by the charter it is provided that on a vacancy occurring among the members of a select body it should be lawful for the other members of that body 'at that time surviving and remaining, or the greater part of the same' to elect another of the body to fill the office so vacated, a majority of the entire select body must be present at such election in order to make it valid: *R v Devonshire* (1823) 1 B & C 609.

3 *Re Greymouth-Point Elizabeth Rly and Coal Co Ltd, Yuill v Greymouth-Point Elizabeth Rly and Coal Co Ltd* [1904] 1 Ch 32.

4 *R v Varlo* (1775) 1 Cowp 248.

5 *R v Bower* (1823) 1 B & C 492.

6 *R v Greet* (1828) 8 B & C 363.

UPDATE

1205 Presence of quorum necessary

NOTE 1--1985 Act s 370A replaced by Companies Act 2006 s 318(1): see COMPANIES vol 14 (2009) PARA 646.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(5) MEETINGS OF THE CORPORATION/(ii) Quorum/1206. Presence of the head of the corporation.

1206. Presence of the head of the corporation.

Where a corporation aggregate has a head, no corporate act, other than the election of a new head, may be done without the presence of the head; and this is so even though no provision is made for it by the charter¹. The act of the head and a majority of the members is the act of the corporation, and will be good even if the others do not agree². Thus when the chief office or head consists of more than one individual, no corporate act may be done unless the chief office is completely full³.

Whenever any business is to be done by a particular part of a corporation only, the presence of the head is not necessary; but where it is required to be done by the whole corporation at large, the presence of the head is necessary⁴.

The members of a corporation in meeting assembled may always proceed in the absence of the head with any business begun when the head was present, although they cannot propose any new business in his absence⁵. Where, however, the presence of certain persons or bodies is required for the purpose of doing a corporate act, it does not follow that their consent to the doing of the act is, therefore, also necessary⁶.

1 *R v Ipswich Corp* (1706) 2 Ld Raym 1232 at 1237. As to the concurrence of the head see PARA 1209 post. For the meaning of 'corporation aggregate' see PARA 1109 ante.

2 *Dean and Chapter of Fernes' Case* (1607) Dav Ir 116 at 130.

3 *R v Smart* (1768) 4 Burr 2244 (where the single chief office was composed not of a mayor, but of two bailiffs, and it was held that the office was not filled unless there were two bailiffs).

4 *R v Duffin* (1733) 2 Barn KB 370.

5 *R v Norris* (1730) 1 Barn KB 385.

6 *Cotton v Davies* (1717) 1 Stra 53.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(5) MEETINGS OF THE CORPORATION/(ii) Quorum/1207. Absence of quorum.

1207. Absence of quorum.

Where a particular quorum is required by statute to be necessary for the performance of corporate acts, non-observance of the statutory requirement will be fatal to the validity of the act, as against strangers to the corporation¹. Where, however, the quorum is fixed by the private regulations of the corporation, as, for example, where it is fixed by the directors of a company under a power in its articles of association, an act apparently valid on the face of it will be good in favour of a stranger acting in good faith and without notice of any irregularity².

1 *D'Arcy v Tamar, Kit Hill and Callington Rly Co* (1866) LR 2 Exch 158. See, however, para 1236 text and notes 7-11 post.

2 *County of Gloucester Bank v Rudry Merthyr Steam and House Coal Colliery Co* [1895] 1 Ch 629, CA. See also COMPANIES vol 14 (2009) PARA 266 et seq.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(5) MEETINGS OF THE CORPORATION/(iii) Proceedings at Meetings/1208. Powers of the majority present.

(iii) Proceedings at Meetings

1208. Powers of the majority present.

If a corporation is entrusted with a duty of a public nature and the corporate assembly has duly met, a corporate act may be done by the majority of those who have once regularly constituted the meeting¹, even though the constitution contains no express provision on the subject². Prima facie, in all acts done by a corporation aggregate, the decision of the majority binds the minority³, and may be enforced against them by the court⁴; but, in cases of fraud, the minority will be entitled to obtain relief on application to the court⁵. Where the majority wrongfully refuses to discharge a duty imposed by law on the corporate body, the persons concerned may be liable to punishment, but the refusal of the majority does not enable the minority validly to perform the act in question⁶.

Where a charter requires that a corporate act should be done by a particular body or the major part of its members, the major part of the whole number, not of those actually assembled, is intended⁷. By ancient usage, however, an act may be validly done by a majority of those present at the meeting, irrespective of the proportion which they may bear to the whole body⁸; and a corporation may have the right, either by express provision in its charter or by prescription, to do a corporate act by means of a majority of the members for the time being in existence as distinguished from a majority of the complete body when fully constituted⁹.

1 *R v Monday* (1777) 2 Cowp 530 at 538; *Withnell v Gartham* (1795) 6 Term Rep 388; *Grindley v Barker* (1798) 1 Bos & P 229 at 236 per Eyre CJ; *Cortis v Kent Water-works Co* (1827) 7 B & C 314; *R v Kendall* (1841) 1 QB 366; *Cook v Loveland* (1799) 2 Bos & P 31; *Perrott and Perrott Ltd v Stephenson* [1934] Ch 171 at 173 per Bennett J; cf *Macher v Foundling Hospital* (1813) 1 Ves & B 188. As to the meaning of 'corporate assembly' see PARA 1205 ante.

2 *A-G v Davy* (1741) 2 Atk 212. Where, by a charter, 12 persons were incorporated for certain purposes, and, by a clause in the charter, any three members of that corporation were empowered to do certain other acts, it was held that the three persons constituted a corporation for the purpose of performing such acts, and accordingly that such acts were validly done by two of their number in spite of the opposition of the third: *A-G v Davy* supra. It is presumed that nowadays this body would be held to be a select body within the larger corporation, and not a corporation itself: see PARA 1203 ante.

3 *Hascard v Somany* (1693) 1 Freem KB 504; *A-G v Davy* (1741) 2 Atk 212. For the meaning of 'corporation aggregate' see PARA 1109 ante.

4 *Exeter and Crediton Rly Co v Buller* (1847) 5 Ry & Can Cas 211.

5 *Society of Practical Knowledge v Abbott* (1840) 2 Beav 559; cf COMPANIES vol 14 (2009) PARA 463.

6 *Gosling v Veley* (1853) 4 HL Cas 679.

7 *Anon* (1731) 2 Barn KB 74; cf *Knowles v Zoological Society of London* [1959] 2 All ER 595, [1959] 1 WLR 823, CA (where, in order to avoid inconvenience and inconsistency with the society's charters, it was held that a reference in the byelaws to 'the majority of fellows entitled to vote' meant 'the majority of fellows present at a meeting and entitled to vote').

8 *Hascard v Somany* (1693) 1 Freem KB 504.

9 *R v Hoyte* (1795) 6 Term Rep 430.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(5) MEETINGS OF THE CORPORATION/(iii) Proceedings at Meetings/1209. Concurrence of the head of the corporation.

1209. Concurrence of the head of the corporation.

Where the corporation consists of a head and an aggregate of members in addition, the head, though he must be present at the meeting¹, need not necessarily be one of the majority or concur in the decision of the majority, unless it is clear on the construction of the constitution that the concurrence of the head is necessary².

1 See PARA 1206 ante.

2 *Re Queen's College, Cambridge* (1828) 5 Russ 64 (not following *Clare Hall's Case* (1788) reported 5 Russ 73n). Where an advowson is conveyed to a corporation consisting of a master and 12 poor brethren, the right to nominate to the living belongs to the majority of the entire body, including the master, but the latter need not be one of the majority: *R v Kendall* (1841) 1 QB 366. As to advowsons see ECCLESIASTICAL LAW vol 14 para 776 et seq.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(5) MEETINGS OF THE CORPORATION/(iii) Proceedings at Meetings/1210. Restrictions on powers of majority.

1210. Restrictions on powers of majority.

A majority, however large, cannot bind a dissentient minority, however small, to do that which is not authorised by the constitution¹.

The majority must allow the minority to state their views and express themselves generally on the matter which is the subject of the meeting. The minority must not, however, unreasonably obstruct the will of the majority, as, for example, by discussing and talking about the matter in question beyond a reasonable time².

The minority have no right of action against the majority in respect of proceedings of which they do not approve, where the act complained of is an act which in substance the majority are entitled to do³. The same principle applies where something has been done irregularly or illegally which the majority are entitled to do regularly or legally; for the majority may always set it right⁴. The minority may, however, come to the court when the majority are abusing their powers and are depriving the minority of their rights⁵.

1 *Simpson v Denison* (1852) 10 Hare 51 at 55; *Pickering v Stephenson* (1872) LR 14 Eq 322 at 340; *Burland v Earle* [1902] AC 83, PC. As to the limitation of the powers of a corporation see PARA 1230 et seq post.

2 *Wall v London and Northern Assets Corpn* [1898] 2 Ch 469, CA. It is to be inferred from this decision that in a proper case it is lawful for the presiding officer to put a motion before the meeting to the effect that the discussion of the question for which the meeting was convened be closed and that a vote on that question be taken: cf *MacDougall v Gardiner* (1875) 1 ChD 13 at 23, CA, per James LJ.

3 *Lord v Governor & Co of Copper Miners* (1848) 2 Ph 740; and see COMPANIES vol 14 (2009) PARA 464.

4 *Mozley v Alston* (1847) 1 Ph 790; *Foss v Harbottle* (1843) 2 Hare 461; *MacDougall v Gardiner* (1875) 1 ChD 13 at 25, CA, per Mellish LJ.

5 *MacDougall v Gardiner* (1875) 1 ChD 13, CA; *Menier v Hooper's Telegraph Works* (1874) 9 Ch App 350; *Burland v Earle* [1902] AC 83, PC; *Brown v British Abrasive Wheel Co Ltd* [1919] 1 Ch 290; cf COMPANIES vol 14 (2009) PARA 463.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(5) MEETINGS OF THE CORPORATION/(iii) Proceedings at Meetings/1211. Presiding officer or chairman.

1211. Presiding officer or chairman.

Where by the constitution a certain officer has to preside at meetings, it is his duty, as presiding officer or chairman, to preserve order, to take care that the proceedings are conducted in a proper manner and to ensure that the sense of the meeting is properly ascertained with regard to any question which is regularly before the meeting¹.

It is not, as a general rule, within the scope of the authority of the presiding officer or chairman of a meeting to stop the meeting at his own will and pleasure², although he has an inherent power and duty to adjourn the meeting in the event of disorder or violence for such period as he may consider reasonably necessary for the restoration of order³. He cannot declare the meeting dissolved⁴. If he should decline to continue to preside over the meeting, the meeting itself may resolve to go on with the business for which it was convened and appoint a chairman to conduct the business in place of the chairman so refusing to act as presiding officer⁵.

A corporate decision arrived at by or in consequence of a wrong ruling on the part of the presiding officer may be set aside by the court⁶; but the constitution of the corporation may provide for his decision being final unless challenged in the manner therein specified⁷, and then his decision cannot be otherwise impeached except on evidence of bad faith⁸.

1 *National Dwellings Society v Sykes* [1894] 3 Ch 159.

2 *National Dwellings Society v Sykes* [1894] 3 Ch 159.

3 *John v Rees* [1970] Ch 345, [1969] 2 All ER 274; and see CLUBS vol 13 (2009) PARA 254. As to adjournment of meetings see PARA 1214 post.

4 *National Dwellings Society v Sykes* [1894] 3 Ch 159; and see COMPANIES vol 14 (2009) PARA 650.

5 *National Dwellings Society v Sykes* [1894] 3 Ch 159.

6 *Henderson v Bank of Australasia* (1890) 45 ChD 330, CA.

7 *Re Hadleigh Castle Gold Mines Ltd* [1900] 2 Ch 419.

8 *Arnot v United African Lands Ltd* [1901] 1 Ch 518, CA; and see COMPANIES vol 14 (2009) PARA 654.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(5) MEETINGS OF THE CORPORATION/(iii) Proceedings at Meetings/1212. Resolution.

1212. Resolution.

Where a corporator desires to put a resolution before a meeting for the purpose of obtaining a corporate decision on it, he must do so in clear and unambiguous terms; for otherwise the presiding officer may refuse to put it to the vote¹.

¹ *Henderson v Bank of Australasia* (1890) 45 ChD 330 at 347, CA, per Fry LJ. As to the presiding officer see PARA 1211 ante.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(5) MEETINGS OF THE CORPORATION/(iii) Proceedings at Meetings/1213. Amendment of resolution.

1213. Amendment of resolution.

A particular resolution or question being before a corporate meeting, it is open to any corporator attending that meeting to move an amendment to it, provided that it is legitimate and germane to the matter for which the meeting was called; and the chairman or presiding officer is bound to accept and put the amendment before the meeting for decision¹. This rule does not apply where the question before the meeting is simply the confirmation or rejection of some act which has been done but requires confirmation or rejection².

¹ *Henderson v Bank of Australasia* (1890) 45 ChD 330, CA. As to the presiding officer or chairman see PARA 1211 ante.

² *Wall v London and Northern Assets Corpn* [1898] 2 Ch 469 at 483, CA, per Chitty LJ.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(5) MEETINGS OF THE CORPORATION/(iii) Proceedings at Meetings/1214. Adjournment.

1214. Adjournment.

Where by the constitution certain business must be done on a particular day, the corporation has, of necessity, power to adjourn so as to conclude such business as it had begun but had not time to finish on the day fixed by its charter; and the business done on the day to which the adjournment is made will be as valid as though done on the day fixed by the charter¹.

Again, where it is not possible to transact the whole of the business for which a meeting has been called, there is a power at common law to adjourn the meeting for the purpose of completing the business², and the adjourned meeting is to be considered as a part of the original meeting³.

It is unnecessary to give notice of an adjourned meeting⁴; but no fresh business may be transacted at an adjourned meeting, unless special notice of an intention to transact such business at the adjourned meeting has been duly given⁵.

¹ *R v Carmarthen Corpn* (1813) 1 M & S 697.

² *Kerr v Wilkie* (1860) 1 LT 501, HL; and see *John v Rees* [1970] Ch 345, [1969] 2 All ER 274 (adjournment in the event of disorder or violence).

³ *Scadding v Lorant* (1851) 3 HL Cas 418; and see *McLaren v Thomson* [1917] 2 Ch 261, CA; *Neuschild v British Equatorial Oil Co Ltd* [1925] Ch 346; and COMPANIES vol 14 (2009) PARA 650. Where a meeting was held at which votes were cast and a scrutiny demanded, and the presiding officer dismissed the electors 'to meet again on a fresh summons', and such a fresh summons was subsequently issued by a fresh presiding officer, and the scrutiny took place at the meeting convened by that summons, it was held that the first meeting was not dissolved but only adjourned: *R v London Corpn* (1829) 9 B & C 1.

4 *Kerr v Wilkie* (1860) 1 LT 501, HL. As to notice of meetings see PARA 1201 ante.

5 *R v Grimshaw* (1847) 10 QB 747 at 756 per Coleridge J.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(5) MEETINGS OF THE CORPORATION/(iii) Proceedings at Meetings/1215. Presence of non-members.

1215. Presence of non-members.

Participation by a non-member in the deliberations at a meeting (but not his mere presence) will invalidate the proceedings¹.

1 *Lane v Norman* (1891) 66 LT 83; *Leary v National Union of Vehicle Builders* [1971] Ch 34, [1970] 2 All ER 713.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(5) MEETINGS OF THE CORPORATION/(iii) Proceedings at Meetings/1216. Representation of corporations at meetings.

1216. Representation of corporations at meetings.

A corporation, whether or not a company within the meaning of the Companies Act 1985¹, may:

- 24 (1) if it is a member of another corporation, being such a company, by resolution of its directors or other governing body, authorise such person as it thinks fit to act as its representative at any meeting of the company or at any meeting of any class of members of the company²;
- 25 (2) if it is a creditor, including a holder of debentures, of another corporation, being such a company, by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of creditors of the company held in pursuance of the Companies Act 1985 or of rules made under it, or in pursuance of the provisions contained in any debenture or trust deed, as the case may be³.

A person so authorised is entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual shareholder, creditor or debenture holder of the other company⁴.

1 For the meaning of 'company' in the Companies Act 1985 see s 735(1)(a).

2 See *ibid* s 375(1)(a)1.

3 See *ibid* s 375(1)(b)1.

4 *Ibid* s 375(2).

UPDATE

1216 Representation of corporations at meetings

NOTE 1--Definition in Companies Act 1985 s 735(1)(a) now in Companies Act 2006 s 1(1): see COMPANIES vol 14 (2009) PARA 32.

NOTES 2-4--Companies Act 1985 s 375 replaced by Companies Act 2006 s 323(1)-(3): see COMPANIES vol 14 (2009) PARA 661.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(5) MEETINGS OF THE CORPORATION/(iv) Voting/1217. Right to vote.

(iv) Voting

1217. Right to vote.

A mere right to be admitted a member of a corporation, however clear the right may be, gives a claimant to admission no right to vote at corporate meetings before actual admittance¹.

Where a corporator has cast a vote in a capacity to which he has no right, he cannot afterwards claim that the vote was cast in another capacity which he formerly had by right².

1 *R v Askew* (1768) 4 Burr 2186 at 2202.

2 *R v Hughes* (1826) 5 B & C 886.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(5) MEETINGS OF THE CORPORATION/(iv) Voting/1218. Proxies.

1218. Proxies.

There is no common law right on the part of a member of a corporation to vote by proxy or substitute¹. The right of a corporator to vote by proxy depends on the contract between himself and the rest of the corporators, and all the requirements of that contract as to the exercise of the right must be followed².

Where a corporator is by the constitution of the corporation entitled to vote at corporate meetings by proxy, although he himself is not present at the meeting when the vote is taken, then, if the vote is taken by a show of hands, the proxy, by holding up his hand, cannot count for more than one vote³.

In the absence of clear words taking away the corporator's personal right to vote after he has given a proxy, that personal right remains and he is entitled to attend the meeting and give his own vote, in which case the proxy cannot be used⁴.

1 *Harben v Phillips* (1883) 23 ChD 14 at 35, CA, per Bowen LJ.

2 *Harben v Phillips* (1883) 23 ChD 14 at 32, CA, per Cotton LJ; *McLaren v Thomson* [1917] 2 Ch 261 at 263, CA. Where, however, the constitution of a corporation provided that no objection should be made to the validity of any vote except at the time when it was tendered, and every vote not then disallowed should be deemed valid for all purposes whatsoever, it was held that an irregular proxy vote had to stand: *Colonial Gold Reef Ltd v Free State Rand Ltd* [1914] 1 Ch 382. As to the law relating to proxies for company meetings generally see COMPANIES vol 14 (2009) PARAS 662-665.

3 *Ernest v Loma Gold Mines Ltd* [1897] 1 Ch 1 at 7, CA, per Lindley LJ.

4 *Cousins v International Brick Co Ltd* [1931] 2 Ch 90 at 101, CA, per Lord Hanworth MR.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(5) MEETINGS OF THE CORPORATION/(iv) Voting/1219. Mode of voting.

1219. Mode of voting.

At common law votes at all meetings are taken by a show of hands followed, if necessary, by a poll¹; and, in the absence of any special provision to the contrary in the constitution of a particular corporation, the common law method must prevail². Voting by show of hands means counting the persons present who are entitled to vote and who choose to vote by holding up their hands³.

1 *Anthony v Seger* (1789) 1 Hag Con 9 at 13 per Sir W Scott. A poll appears to be the taking of a vote by counting the polls or heads of the voters present and voting. As to voting and the proceedings at meetings of companies generally see COMPANIES vol 14 (2009) PARA 652 et seq. As to proceedings of local authorities see LOCAL GOVERNMENT vol 69 (2009) PARA 623. As to voting by proxies see PARA 1218 ante.

2 *Re Horbury Bridge Coal, Iron and Waggon Co* (1879) 11 ChD 109 at 115, CA, per Jessel MR. However, it is usual, for the sake of convenience, to make special rules as to the method of taking votes.

3 *Ernest v Loma Gold Mines Ltd* [1897] 1 Ch 1 at 6, CA, per Lindley LJ. It seems that, where the chairman is in doubt as to the result of the vote on a show of hands, he may forthwith hold another count: see *Hickman v Kent or Romney Marsh Sheepbreeders' Association* (1920) 36 TLR 528 at 533 per Lord Reading CJ; on appeal 37 TLR 163, CA. See also COMPANIES vol 14 (2009) PARA 654.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(5) MEETINGS OF THE CORPORATION/(iv) Voting/1220. Demand for poll.

1220. Demand for poll.

Where a corporate vote is authorised by the constitution, byelaw, statute or otherwise, to be taken in a particular manner, every corporator has at common law a right, immediately at the conclusion of the taking of such vote, to demand a poll unless such right is clearly taken away by statute¹ or special custom². The proper person to grant the poll is the presiding officer of the meeting at which it is demanded³.

1 *R v Wimbledon Local Board* (1882) 8 QBD 459, CA.

2 *Campbell v Maund* (1836) 5 Ad & El 865 at 880, Ex Ch; and see COMPANIES vol 14 (2009) PARA 655.

3 *R v D'Oyly, R v Hedger* (1840) 12 Ad & El 139 at 159 per Lord Denman CJ. As to the presiding officer see PARA 1211 ante.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(5) MEETINGS OF THE CORPORATION/(iv) Voting/1221. Effect of demand for a poll.

1221. Effect of demand for a poll.

A poll is in the nature of an appeal by one of the contending parties dissatisfied with the decision of the chairman on a show of hands¹. Where a poll is demanded, the previous proceedings, so far as voting is concerned, become abandoned and a nullity. The real voting begins with the commencement of the poll².

Where a poll is legally demanded, it may be taken then and there if the presiding officer or chairman in his discretion thinks fit³, unless the constitution directs otherwise. Thus, where the articles of association of a company direct that all questions at general meetings are to be decided by a show of hands, unless a poll is demanded, in which case such poll is to be held at a time and place to be fixed by the directors within seven days from the date of the meeting, the taking of a poll then and there is a violation of the articles and illegal⁴.

It seems that a member who was not present at the voting at the conclusion of which a poll was demanded is not precluded by such absence from attending and voting at the subsequent poll, which is a mere enlargement of the meeting at which it was demanded⁵.

1 *Campbell v Maund* (1836) 5 Ad & El 865 at 881 per Tindal CJ; cf COMPANIES vol 14 (2009) PARA 655.

2 *Anthony v Seger* (1789) 1 Hag Con 9 at 13 per Sir W Scott.

3 *Re Chillington Iron Co* (1885) 29 ChD 159 (following *R v D'Oyly* (1840) 12 Ad & El 139).

4 *Re British Flax Producers' Co Ltd* (1889) 60 LT 215.

5 *R v Wimbledon Local Board* (1882) 8 QBD 459 at 462-463, CA, per Brett LJ; but see also the question by Lord Abinger CB and the reply to it in *Campbell v Maund* (1836) 5 Ad & El 865 at 874.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/3. MEMBERSHIP AND GOVERNANCE/(5) MEETINGS OF THE CORPORATION/(iv) Voting/1222. Casting vote.

1222. Casting vote.

In the case of a corporation created by charter, where the constitution does not provide for the event of there being an equality of votes at a corporate meeting, the omission must be made good by a fresh charter or by statute or other competent authority, not by the corporation; for, unless expressly allowed by the constitution or long usage, the head or chief officer has no casting vote¹. In such a case, a byelaw empowering the presiding officer to give a casting vote is bad as being contrary to the constitution².

1 *Anon* (1773) Lofft 315 per Lord Mansfield CJ.

2 *R v Ginever* (1796) 6 Term Rep 732. In the case of a company regulated by the Companies Act 1985 the articles of association commonly provide for the chairman to have a casting vote: see eg the Companies (Tables A to F) Regulations 1985, SI 1985/805, Schedule, Table A art 50; and COMPANIES vol 14 (2009) PARA 653.

UPDATE

1222 Casting vote

NOTE 2--Companies Act 1985 replaced for the most part by Companies Act 2006.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(1) IN GENERAL/1223. Statutory and non-statutory corporations.

4. POWERS, DUTIES AND LIABILITIES

(1) IN GENERAL

1223. Statutory and non-statutory corporations.

Corporations may be either statutory or non-statutory, and a fundamental distinction exists between the powers and liabilities of the two classes. Statutory corporations¹ have such rights and may do such acts only as are authorised directly or indirectly by the statutes creating them; non-statutory corporations, speaking generally, may do everything which an ordinary individual may do unless restricted directly or indirectly by statute².

When a corporation is created otherwise than by the authority of Parliament³, all incidental powers and liabilities attach as of course. Thus generally, although there is no express power conferred to purchase land or to sue or be sued, the corporation may so purchase, or sue or be sued, as fully as though all these necessary incidents had been expressly given⁴. Similarly, it may make leases and grants⁵.

The doctrine and ordinary rules relating to estoppel apply to corporations as much as to individuals⁶. Although, generally speaking, a corporation is entitled to claim the benefit of, and is barred by, the Limitation Act 1980⁷, to the same extent as a private individual, there are exceptions in the case of claims for the recovery of land brought by a spiritual or eleemosynary corporation sole, or by a person claiming through such a corporation⁸. Where by a statute a time limit is established within which certain things are to be done, the fact that after the commencement of the statutory period a corporation sole falls vacant will not suspend the operation of the statute⁹.

1 As to limitation of powers in the case of corporations created by statute see PARA 1231 post.

2 *A-G v Manchester Corpn* [1906] 1 Ch 643 at 651 per Farwell J. See also *British South Africa Co v De Beers Consolidated Mines Ltd* [1910] 1 Ch 354 at 374-376 per Swinfen Eady J (revsd on another point sub nom *De Beers Consolidated Mines Ltd v British South Africa Co* [1912] AC 52, HL); *Institution of Mechanical Engineers v Cane* [1961] AC 696 at 724-725, [1960] 3 All ER 715 at 729, HL, per Lord Denning; and see PARA 1230 post.

3 As to modes of creation see PARA 1128 et seq ante.

4 1 Roll Abr 513. Thus a claim for use and occupation of land may be maintained by a corporation aggregate, even though the permission to use and occupy was not given by deed: *Dean and Chapter of Rochester v Pierce* (1808) 1 Camp 466; *Carmarthen Corpn v Lewis* (1834) 6 C & P 608 (tolls). For the meaning of 'corporation aggregate' see PARA 1109 ante. As to the general rule that any person natural or artificial may sue or be sued see CIVIL PROCEDURE vol 11 (2009) PARA 207; and as to alienation and acquisition of land see PARA 1247 et seq post.

5 *Sutton's Hospital Case* (1612) 10 Co Rep 1a, 23a at 30b, Ex Ch; and see PARA 1256 post.

6 *R v Ipswich Corpn* (1706) 2 Ld Raym 1232, as reported in Holt KB 445 at 448; *Bank of Ireland v Evans' Charities Trustees* (1855) 5 HL Cas 389. As to estoppel see ESTOPPEL.

7 See LIMITATION PERIODS.

8 See the Limitation Act 1980 s 15(7), Sch 1 Pt II paras 10-13; and LIMITATION PERIODS vol 68 (2008) PARAS 1026-1027, 1046. For the meaning of 'corporation sole' see PARA 1111 ante.

9 *Homfray v Scroope* (1849) 13 QB 509.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(1) IN GENERAL/1224. Delegation of statutory functions.

1224. Delegation of statutory functions.

Statutory powers and duties of a corporation must in general be discharged by the corporation itself and not delegated¹. The corporation, not being a physical person, must, in discharging its powers and duties, act by means of its agents², but the responsibility for the discharge of those powers and duties remains with the corporation³. The powers and duties of the corporation may be delegated or transferred only if delegation or transfer is authorised by statute⁴.

1 *Gardner v London, Chatham and Dover Rly Co* (1867) 2 Ch App 201 at 212, cited in *Central Ontario Rly Co v Trusts and Guarantee Co Ltd* [1905] AC 576 at 581-582, PC.

2 See PARA 1235 post.

3 *Gardner v London, Chatham and Dover Rly Co* (1867) 2 Ch App 201 at 212. As to the liability of officers of a corporation for acts which are outside the powers of the corporation see PARA 1243 post. As to the liability of a corporation for torts committed by its agents see PARA 1275 et seq post. As to the responsibility of a corporation for breach of a statutory duty see *Yelland v Powell Duffryn Associated Collieries Ltd* [1941] 1 KB 154, [1941] 1 All ER 278, CA; and TORT vol 45(2) (Reissue) PARA 405.

4 As to the general rule in relation to statutory powers see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 31. Statutory functions of railway or canal companies could not be delegated without statutory authority: see *Beman v Rufford* (1851) 1 Sim NS 550; *Great Northern Rly Co v Eastern Counties Rly Co* (1851) 9 Hare 306; *Winch v Birkenhead, Lancashire and Cheshire Junction Rly Co* (1852) 5 De G & Sm 562; *Re Working UDC (Basingstoke Canal) Act 1911* [1914] 1 Ch 300, CA (assignment by canal company of its undertaking held ultra vires). An agreement by which one railway company gave running powers over its railway to another was not delegation or ultra vires: *Midland Rly Co v Great Western Rly Co* (1873) 8 Ch App 841. As to the appointment of deputies by officers of corporations see PARA 1162 ante.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(1) IN GENERAL/1225. 'Person' in statute usually includes corporation.

1225. 'Person' in statute usually includes corporation.

The word 'person' in a public statute as a general rule includes a person in law, that is to say, a corporation, as well as a natural person; and, in every Act of Parliament passed on or after 1 January 1890, the expression 'person', unless the contrary intention appears, includes any body of persons corporate or unincorporate¹. A corporation is not included in the word 'person' when used in a statute if the statute contains expressions which are repugnant to that construction². If a statute provides that no person shall do a particular act except on a particular condition, it is prima facie natural and reasonable (unless there is something in the context, or in the manifest object of the statute, or in the nature of the subject matter, to exclude that construction) to understand the legislature as intending such persons as by the use of proper means may be able to fulfil the condition, and not those who, though called 'persons' in law, have no capacity to do so at any time, by any means, or under any circumstances³.

1 See the Interpretation Act 1978 ss 5, 22(1), 23(1), Sch 1, Sch 2 para 4(1)(a); and STATUTES vol 44(1) (Reissue) PARA 1382. As to the construction of 'person' in penal enactments see Sch 2 para 4(5); para 1280 note 8 post; and STATUTES vol 44(1) (Reissue) PARA 1382. The fact that some of the provisions of a statute are inapplicable to a company does not show that all its provisions are inapplicable and does not afford any evidence of that contrary intention which under the provisions of what is now the Interpretation Act 1978 is

necessary to prevent the term 'person' including a corporation: *Evans & Co Ltd v LCC* [1914] 3 KB 315 at 319-320.

2 *Wills v Tozer* (1904) 20 TLR 700; and see note 3 infra.

3 *Pharmaceutical Society v London and Provincial Supply Association* (1880) 5 App Cas 857 at 862, HL, per Lord Selborne LC. A corporation may be, in one sense, included within the term 'person or persons' in an Act; but the Act must be construed with reference to the subject matter, and it must be ascertained whether it would be reasonable that the corporation should be within the words: *Guardians of St Leonard's, Shoreditch v Franklin* (1878) 3 CPD 377; cf *Curtis v Old Monkland Conservative Association* [1906] AC 86, HL. For cases in which the word 'person' has been held to include a corporation see *Boyd v Croydon Rly Co* (1838) 4 Bing NC 669; *A-G v Newcastle Corp* (1842) 5 Beav 307 (affd sub nom *Newcastle Corp v A-G* (1845) 12 Cl & Fin 402, HL); *Hirst v West Riding Union Banking Co Ltd* [1901] 2 KB 560, CA (following *Swift v Jewsbury* (1874) LR 9 QB 301, Ex Ch). As to criminal liability see PARAS 1280-1281 post. By the Commissioners Clauses Act 1847 s 3, in that Act and the special Act and in any Act incorporated therewith the word 'person' includes a corporation, whether aggregate or sole, unless there is something in the subject or the context repugnant to such construction. Where, however, an Act incorporating the Commissioners Clauses Act 1847 contained a provision that certain commissioners should 'be elected by a majority of the votes of the persons present and entitled to vote at the respective meeting for the election, such votes to be given in writing under the hands of the respective voters, but a proxy not to be in any case admitted', the word 'person' could not be construed to include a corporation, and consequently a corporation could not vote: *Wills v Tozer* (1904) 20 TLR 700. The words 'rogue and vagabond' in a statute have been said to be wholly inappropriate to a limited company: *Hawke v E Hulton & Co Ltd* [1909] 2 KB 93; *A-G v Walkergate Press Ltd* (1930) 142 LT 408. A corporation is not a person within the Law of Property Act 1925 s 164(1) and a settlement by a corporation is not therefore subject to the rule in s 164 against accumulation of income: see *Re Dodwell & Co Ltd's Trust, Baker v Timmins* [1979] Ch 301, sub nom *Re Dodwell & Co Ltd's Trust Deed* [1978] 3 All ER 738; and PERPETUITIES AND ACCUMULATIONS vol 35 (Reissue) PARA 1121. A company cannot be the victim of the offence of harassment under the Protection from Harassment Act 1997 (ie alarming the person or causing the person distress: see s 7(2)) as the term 'person' does not include a limited company in this case: see *Daiichi UK Ltd v Stop Huntingdon Animal Cruelty* [2003] EWHC 2337 (QB), [2004] 1 WLR 1503, [2005] 1 BCLC 27. As to a corporation as a 'person' in particular cases see PARA 1226 post.

UPDATE

1225 'Person' in statute usually includes corporation

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(1) IN GENERAL/1226. Corporation as 'person' in particular cases.

1226. Corporation as 'person' in particular cases.

A corporation cannot fill the office of treasurer of a friendly society¹, act as a dentist² or a veterinary surgeon³, or be admitted as a solicitor⁴, or become a pharmaceutical chemist⁵.

A corporation may be a 'person of full age' within the meaning of the Settled Land Act 1925 and the Law of Property Act 1925⁶.

A corporation is a person who may be commanded to produce documents⁷ under the Evidence (Proceedings in Other Jurisdictions) Act 1975⁸, although it is incapable of being commanded to attend for the purpose of being examined on oath under that Act⁹.

A corporation may be a person within the legislation relating to food and drugs¹⁰ and other enactments of a penal character¹¹.

A corporation may be a 'respectable and responsible person' for the purpose of a provision in a lease which provides that consent to assignment is not to be withheld in respect of such a person¹².

A summons requiring appearance before a magistrates' court may be issued to a corporation as well as to a natural person¹³.

1 *Re West of England and South Wales District Bank, ex p Swansea Friendly Society* (1879) 11 ChD 768. See FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 2183.

2 *A-G v George C Smith Ltd* [1909] 2 Ch 524.

3 *A-G v Churchill's Veterinary Sanatorium Ltd* [1910] 2 Ch 401.

4 *Law Society v United Service Bureau Ltd* [1934] 1 KB 343, DC. It has been held that, as a corporation is not capable of being admitted as a solicitor, it could not be convicted under the Solicitors Act 1932 s 46 (repealed: see now the Solicitors Act 1974 s 21 (as amended); and LEGAL PROFESSIONS vol 65 (2008) PARA 591), as a person wilfully pretending to be qualified as a solicitor: *Law Society v United Service Bureau Ltd* supra. A corporation could now, however, be convicted of a similar offence under the Solicitors Act 1974 ss 21, 24(1) (as amended): see LEGAL PROFESSIONS vol 65 (2008) PARA 595.

5 *Pharmaceutical Society v London and Provincial Supply Association* (1880) 5 App Cas 857, HL.

6 See *Re Earl of Carnarvon's Highclere Settled Estates* [1927] 1 Ch 138 (the words 'of full age' must be treated as meaning no more than 'not being an infant' and are therefore applicable to a corporation).

7 See CIVIL PROCEDURE vol 11 (2009) PARAS 1055, 1058.

8 See under the Evidence (Proceedings in Other Jurisdictions) Act 1975 ss 1, 2.

9 *Penn-Texas Corp v Murat Anstalt* [1964] 1 QB 40, [1963] 1 All ER 258, CA.

10 *Pearks, Gunston and Tee Ltd v Ward, Hennen v Southern Counties Dairies Co* [1902] 2 KB 1; *Chuter v Freeth and Pocock Ltd* [1911] 2 KB 832; and see *Enniskillen Union Guardians v Hilliard* (1884) 15 Cox CC 643.

11 As to the criminal liability of corporations see PARAS 1280-1281 post.

12 See *Willmott v London Road Car Co Ltd* [1910] 2 Ch 525, CA (following *Re Jeffcock's Trusts* (1882) 51 LJ Ch 507); and LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 492.

13 *Evans & Co Ltd v LCC* [1914] 3 KB 315.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(1) IN GENERAL/1227. Duty to comply with human rights legislation.

1227. Duty to comply with human rights legislation.

All corporations which are classified as public authorities have a duty to ensure they do not act in a way that is incompatible with Convention rights, that is to say certain rights set out in the Convention for the Protection of Human Rights and Fundamental Freedoms (commonly known as the European Convention on Human Rights)¹. For these purposes, 'public authority' includes any person certain of whose functions are functions of a public nature², but there is no statutory definition of the term nor is there a statutory list of such public authorities. The courts will look at the functions, powers and purpose of the body in question to determine whether or not a body is a public authority for these purposes³.

1 Human Rights Act 1998 s 6(1). 'Convention rights' for these purposes are defined in s 1(1), Sch 1: see CONSTITUTIONAL LAW AND HUMAN RIGHTS. The Convention for the Protection of Human Rights and Fundamental

Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) is enshrined in the Human Rights Act 1998 s 1(3), Sch 1: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 122 et seq.

2 Ibid s 6(3)(b).

3 See *Aston Cantlow and Wilmcote with Billesley Parochial Church Council v Wallbank* [2003] UKHL 37, [2004] 1 AC 546, [2003] 3 All ER 1213, HL. See also *R (on the application of Beer (t/a Hammer Trout Farm) v Hampshire Farmers' Market Ltd* [2003] EWCA Civ 1056, [2004] 1 WLR 233.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(1) IN GENERAL/1228. Duty to comply with freedom of information legislation.

1228. Duty to comply with freedom of information legislation.

The Freedom of Information Act 2000 provides that, subject to certain exemptions, any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request, and if that is the case, to have that information communicated to him¹. All corporations which are classified as public authorities therefore have a duty to comply with such requests for information. For these purposes, 'public authority' means any body which, any other person who, or the holder of any office which (1) is listed in the Freedom of Information Act 2000²; or (2) is designated by order³. It also means a publicly-owned company⁴.

1 Freedom of Information Act 2000 s 1(1), (2); and see CONFIDENCE AND DATA PROTECTION vol 8(1) (2003 Reissue) PARA 583. The exemptions are contained in ss 1(3)-(6), 2, 9,12, 14: see CONFIDENCE AND DATA PROTECTION vol 8(1) (2003 Reissue) PARA 588 et seq.

2 Ibid s 3(1)(a)(i), Sch 1; and see CONFIDENCE AND DATA PROTECTION vol 8(1) (2003 Reissue) PARA 583. The list is set out in Sch 1 and contains references to various corporate bodies amongst the authorities grouped under the following headings: Pt I (general); Pt II (local government); Pt III (national health service); Pt IV (maintained schools and other educational institutions); Pt V (police); Pts VI and VII (other public bodies and offices): see further CONFIDENCE AND DATA PROTECTION vol 8(1) (2003 Reissue) PARA 583.

3 Ibid s 3(1)(a)(i); and see CONFIDENCE AND DATA PROTECTION vol 8(1) (2003 Reissue) PARA 583. The orders referred to in the text are made under s 5.

4 Ibid s 3(1)(b); and see CONFIDENCE AND DATA PROTECTION vol 8(1) (2003 Reissue) PARA 583. For the meaning of 'publicly-owned company' see s 6; and CONFIDENCE AND DATA PROTECTION vol 8(1) (2003 Reissue) PARA 583. 'Company' for these purposes includes any body corporate: s 6(3).

UPDATE

1228 Duty to comply with freedom of information legislation

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(1) IN GENERAL/1229. Duty to prepare annual accounts and report.

1229. Duty to prepare annual accounts and report.

The requirement to prepare annual accounts and to have those accounts audited, and the duty to prepare an annual report are usually stated explicitly in the corporation's charter¹ or byelaws in the statute under which the corporation was incorporated².

1 See eg the Royal Charter for the Continuance of the British Broadcasting Corporation (Cm 3248) (May 1996) art 18; and TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 327. As to creation of corporations by charter see PARA 1130 et seq ante.

2 See eg the Civil Aviation Act 1982 s 15 (as amended) (see AIR LAW vol 2 (2008) PARA 72); and the Atomic Energy Authority Act 1954 s 4(3) (see FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1372). As to creation of corporations by statute see PARA 1143 et seq ante.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(2) LIMITATION OF POWERS/1230. Chartered corporations.

(2) LIMITATION OF POWERS

1230. Chartered corporations.

A corporation created by charter has at common law power to deal with its property and to incur liabilities in the same way as an ordinary individual¹. Even if the charter expressly prohibits a particular act, the corporation may do the act; but if it does that which is prohibited or is not authorised by its charter, its charter may be recalled by the Crown by proceedings on a *scire facias*². Further, a member is entitled to ask for an injunction to restrain the commission by the corporation of acts which are outside the scope of the charter and which may result in its forfeiture³.

Where a statute authorises the grant of a royal charter, the extent of the powers exercisable by a corporation created by a charter granted pursuant to the statute will depend on the true construction and intent of the statute. A London borough which has been granted a charter of incorporation under the London Government Act 1963⁴ may exercise only the powers conferred by statute⁵.

1 *Baroness Wenlock v River Dee Co* (1883) 36 ChD 675n at 685n, CA, per Bowen LJ (on appeal (1885) 10 App Cas 354, HL); *Sutton's Hospital Case* (1612) 10 Co Rep 1a, 23a at 30b, Ex Ch; *Bonanza Creek Gold Mining Co Ltd v R* [1916] 1 AC 566, PC. See also *British South Africa Co v De Beers Consolidated Mines Ltd* [1910] 1 Ch 354 at 374-376 per Swinfen Eady J (revsd on another point sub nom *De Beers Consolidated Mines Ltd v British South Africa Co* [1912] AC 52, HL); and PARA 1223 ante.

2 *Jenkin v Pharmaceutical Society of Great Britain* [1921] 1 Ch 392 at 398 per Peterson J; *R v London Corpn* (1692) 1 Show 274 at 280 per Holt CJ. An alleged breach of a condition on which a charter was granted may be tried on *scire facias*: *Eastern Archipelago Co v R* (1853) 2 E & B 856, Ex Ch. See also PARA 1301 post; and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 264.

3 *Jenkin v Pharmaceutical Society of Great Britain* [1921] 1 Ch 392; and see PARA 1291 post. As to forfeiture see PARA 1296 post.

4 Ie under the London Government Act 1963 s 1(2): see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 30.

5 *Hazell v Hammersmith and Fulham London Borough Council* [1992] 2 AC 1, [1991] 1 All ER 545, HL. Although a borough incorporated by royal charter may historically have had the powers of a natural person, dispositions of its property may now be made only through the exercise of powers conferred by statute: *Stretch v West Dorset District Council* [1996] NPC 66.

UPDATE

1230 Chartered corporations

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(2) LIMITATION OF POWERS/1231. Statutory corporations.

1231. Statutory corporations.

The powers of a corporation created by statute are limited and circumscribed by the statutes which regulate it¹, and extend no further than is expressly stated therein², or is necessarily and properly required for carrying into effect the purposes of its incorporation³, or may be fairly regarded as incidental to, or consequential on, those things which the legislature has authorised⁴. What the statute does not expressly or impliedly authorise is to be taken to be prohibited⁵.

The application of the principle is illustrated by a series of authorities relating to railway companies. Such a company could not guarantee the profits of a steam-packet company which would operate in connection with it⁶, or properly promote a bill for other than strictly railway purposes⁷, such as one modifying or varying the rights or privileges attached to shares⁸; nor could it work coal mines otherwise than for its own use⁹, or carry on an omnibus business¹⁰, or subscribe to the funds of a public institute having no connection with the company¹¹. It was not, however, ultra vires a railway company, which was authorised to keep vessels for the purposes of a ferry, to use them for excursion trips to the sea¹²; or for a company to make charges for the use of its weighing machines¹³, or to lease part of the land acquired by it in pursuance of its statutory powers¹⁴; or for a railway company, with which a dock company had been amalgamated, to supply water to the docks from a source acquired for railway purposes¹⁵.

A company which is incorporated by special Act of Parliament to carry out a particular undertaking for the benefit of the public is not entitled to sell the undertaking, or land which is required for the purpose of the undertaking¹⁶, nor may it alter its objects so as to assume power to abandon the undertaking¹⁷.

The power of a local authority incorporated by or under statute to borrow money¹⁸ does not authorise it to enter into financial swap transactions¹⁹.

1 *Ashbury Railway Carriage and Iron Co v Riche* (1875) LR 7 HL 653; *A-G v Great Eastern Rly Co* (1880) 5 App Cas 473 at 481, HL, per Lord Blackburn; *LCC v A-G* [1902] AC 165 at 167, HL, per Lord Halsbury LC. See also *Baroness Wenlock v River Dee Co* (1885) 10 App Cas 354 at 360-361, HL, per Lord Blackburn (where it was indicated that the principles laid down in *Ashbury Railway Carriage and Iron Co v Riche* supra and *A-G v Great Eastern Rly Co* supra applied to other corporations besides those created under the enactments now replaced by the Companies Act 1985); *Amalgamated Society of Rly Servants v Osborne* [1910] AC 87 at 94, HL; and see *Rochdale Canal Co v Radcliffe* (1852) 18 QB 287; *Eastern Counties Rly Co v Hawkes* (1855) 5 HL Cas 331 at 382; *National Guaranteed Manure Co v Donald* (1859) 4 H & N 8; *Hare v London and North Western Rly Co* (1861) 2 John & H 80; *Re Great Northern Rly Co and Great Central Rly Co* (1908) 24 TLR 417, CA; *A-G v Great Northern Rly Co* [1909] 1 Ch 775, CA; *Coats v Herefordshire County Council* [1909] 2 Ch 579 (on appeal [1909] 2 Ch 601, CA); *A-G v Smethwick Corp* [1932] 1 Ch 562, CA; *Charles Roberts & Co Ltd v British Rlys Board* [1964] 3 All ER 651, [1965] 1 WLR 396. It is to be observed that the principle of *Ashbury Rly Carriage and Iron Co v Riche* supra does not apply where the corporation derives its existence from the act of the Sovereign and not merely from the words of the regulating statute: *Bonanza Creek Gold Mining Co Ltd v R* [1916] 1 AC 566 at 582, PC. As to the application of the principle in relation to companies regulated by the Companies Act 1985 see COMPANIES vol 14 (2009) PARAS 252, 256 et seq; and as to its application to companies regulated by the Companies Clauses Acts see COMPANIES vol 15 (2009) PARA 1672.

2 *Baroness Wenlock v River Dee Co* (1885) 10 App Cas 354, HL. As to the application of this limitation to the promotion of bills to obtain additional powers see PARA 1233 post. The powers conferred by statute on a statutory body may be treated as limiting more extensive rights which the body might have by virtue of the ownership of property: *JH Pigott & Son v Docks and Inland Waterways Executive* [1953] 1 QB 338 at 352, [1953] 1 All ER 22 at 27. In an Act setting up a corporation to control a public industry it is commonly provided that nothing in the provisions of the Act is to be construed as authorising the disregard by the corporation of any enactment or rule of law: see eg, with reference to the British Waterways Board, the Transport Act 1962 s 14(6); and WATER AND WATERWAYS vol 101 (2009) PARA 739. See also *Smith v London Transport Executive* [1951] AC 555, [1951] 1 All ER 667, HL.

3 *Colman v Eastern Counties Rly Co* (1846) 10 Beav 1 at 14 per Lord Langdale MR; *South Yorkshire Rly and River Dun Co v Great Northern Rly Co* (1853) 9 Exch 55 at 84 per Parke B; *Trowbridge Water Co v Wilts County Council* [1909] 1 KB 824; *S Pearson & Son Ltd v Dublin and South Eastern Rly Co* [1909] AC 217 at 220, HL, per Lord Loreburn LC; *A-G v Leicester Corp* [1910] 2 Ch 359; *Dundee Harbour Trustees v Nicol* [1915] AC 550, HL. See also *Deuchar v Gas Light and Coke Co* [1925] AC 691, HL; *Wimbledon and Putney Commons Conservators v Tuely* [1931] 1 Ch 190; *Armour v Liverpool Corp* [1939] Ch 422, [1939] 1 All ER 363.

4 *A-G v Great Eastern Rly Co* (1880) 5 App Cas 473, HL; *London and North Western Rly Co v Price* (1883) 11 QBD 485 at 489, DC; *Stagg v Upper Medway Navigation Co* [1903] 1 Ch 169, CA; *Peel v London and North Western Rly Co* [1907] 1 Ch 5 at 13, CA; *A-G v Smethwick Corp* [1932] 1 Ch 562, CA; *City of Winnipeg v Canadian Pacific Rly Co* [1953] AC 618, [1953] 2 All ER 988, PC; *Grainger v Liverpool Corp* [1954] 1 QB 351, [1954] 1 All ER 333, DC; *A-G v Crayford UDC* [1962] Ch 575, [1962] 2 All ER 147, CA. Where a statutory corporation is empowered by statute to construct works and levy rates to pay for the construction, there is an implication, unless it is clearly negated by something in the statute to the contrary, that it is within the power of the corporation to levy a rate to provide for a liability incurred through the work being done negligently by its servants: *Galsworthy v Selby Dam Drainage Comrs* [1892] 1 QB 348 at 354, CA, per Lord Esher MR. See also *Deuchar v Gas Light and Coke Co* [1925] AC 691, HL; *A-G v Leeds Corp* [1929] 2 Ch 291; *Graham v Glasgow Corp* 1936 SC 108, Ct of Sess; *Armour v Liverpool Corp* [1939] Ch 422, [1939] 1 All ER 363.

5 See note 1 supra.

6 *Colman v Eastern Counties Rly Co* (1846) 10 Beav 1.

7 *Munt v Shrewsbury and Chester Rly Co* (1850) 13 Beav 1; *Caledonian Rly Co v Solway Junction Rly Co* (1883) 49 LT 526.

8 *Stevens v South Devon Rly Co* (1851) 13 Beav 48. The court would by injunction restrain the company from using its funds in defraying the costs of improperly promoting a bill (*Stevens v South Devon Rly Co* supra; *East Anglian Rlys Co v Eastern Counties Rly Co* (1851) 11 CB 775; *Vance v East Lancashire Rly Co* (1856) 3 K & J 50; and see the cases cited in note 7 supra and in para 1233 note 3 post), but it did not grant an injunction restraining the company from promoting the bill (*Stevens v South Devon Rly Co* supra; *Vance v East Lancashire Rly Co* supra; *Re London, Chatham and Dover Railway Arrangement Act, ex p Hartridge and Allender* (1869) 5 Ch App 671), even where the promotion was in direct breach of an undertaking or contract (*A-G v Manchester and Leeds Rly Co* (1838) 1 Ry & Can Cas 436; *Lancaster and Carlisle Rly Co v North Western Rly Co* (1856) 2 K & J 293). As to the power to restrain an application to Parliament see further *Bilston Corp v Wolverhampton Corp* [1942] Ch 391, [1942] 2 All ER 447; and CIVIL PROCEDURE vol 11 (2009) PARA 355.

9 *A-G v Great Northern Rly Co* (1860) 1 Drew & Sm 154.

10 *A-G v Mersey Rly Co* [1907] AC 415, HL.

11 *Tomkinson v South-Eastern Rly Co* (1887) 35 ChD 675. See, however, *Evans v Brunner Mond & Co Ltd* [1921] 1 Ch 359 (subscription by chemical company to scientific institutions).

12 *Forrest v Manchester, Sheffield and Lincolnshire Rly Co* (1861) 30 Beav 40; affd on other grounds 4 De GF & J 126.

13 *London and North Western Rly Co v Price* (1883) 11 QBD 485, DC.

14 *Foster v London, Chatham and Dover Rly Co* [1895] 1 QB 711, CA.

15 *A-G v North Eastern Rly Co* [1906] 2 Ch 675, CA.

16 *Gardner v London, Chatham and Dover Rly Co* (1867) 2 Ch App 201; *Blaker v Herts and Essex Waterworks Co* (1889) 41 ChD 399; *Marshall v South Staffordshire Tramways Co* [1895] 2 Ch 36, CA; *Re Woking UDC (Basingstoke Canal) Act 1911* [1914] 1 Ch 300, CA; *Re Salisbury Railway and Market House Co Ltd* [1969] 1 Ch 349, [1967] 1 All ER 813; cf *Re Nottingham General Cemetery Co* [1955] Ch 683, [1955] 2 All ER 504.

17 *Re Salisbury Railway and Market House Co Ltd* [1969] 1 Ch 349, [1967] 1 All ER 813.

18 Eg under the Local Government Act 1972 s 111 or the Local Government Act 2003 s 1: see LOCAL GOVERNMENT vol 29(1) (Reissue) 594 et seq.

19 *Hazell v Hammersmith and Fulham London Borough Council* [1992] 2 AC 1, [1991] 1 All ER 545, HL. See also *McCarthy & Stone (Developments) Ltd v Richmond upon Thames London Borough Council* [1992] 2 AC 48, [1991] 4 All ER 897, HL (no power to charge for pre-application planning advice); *Crédit Suisse v Allerdale Borough Council* [1997] QB 306, [1996] 4 All ER 129, CA; *Crédit Suisse v Waltham Forest London Borough Council* [1997] QB 362, [1996] 4 All ER 176, CA (no power to guarantee bank loan to company owned by the local authority).

UPDATE

1231 Statutory corporations

NOTE 1--Companies Act 1985 replaced for the most part by Companies Act 2006.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(2) LIMITATION OF POWERS/1232. Capacity.

1232. Capacity.

The validity of an act done by a company regulated by the Companies Act 1985¹ may not be called into question on the ground of lack of capacity by reason of anything in the company's memorandum². In favour of a person dealing³ with such a company in good faith⁴, the power of the board of directors to bind the company, or authorise others to do so, is deemed to be free of any limitation under the company's constitution⁵. A party to a transaction with such a company is not bound to inquire as to whether it is permitted by the company's memorandum or as to any limitations on the powers of the board of directors to bind the company or authorise others to do so⁶. Similar protection is given to non-members who have dealings with an incorporated friendly society⁷.

In any other case, if the transaction is beyond the scope of the constitution of the corporation, it is ultra vires⁸ and void ab initio. Such a transaction cannot become intra vires by reason of ratification⁹, estoppel, lapse of time, acquiescence or delay¹⁰; nor can such a transaction be made binding on the corporation by reason of the corporation's consenting to judgment in a claim brought against it on the transaction, although, if the legality of the transaction is one of the points substantially in dispute, it may be a fair subject of compromise¹¹.

A corporation created by statute for specific purposes cannot bind itself by deed, though executed under its corporate seal, if it appears by the express provisions of the statute governing the corporation, or by necessary or reasonable inference from its enactment, that the deed is ultra vires¹². As between itself and the original parties, a corporation cannot be estopped by deed or otherwise from showing that it had no power to do that which it purports to have done¹³; but as against an assignee for value of an original party to the deed, a corporation may, by direct admission or by conduct¹⁴, preclude itself from alleging that a transaction which apparently should have been regular was illegal¹⁵. The estoppel is not negated by the fact that the corporation has been formed for public purposes¹⁶.

A corporation cannot grant a valid licence to do that which is beyond its own powers¹⁷.

1 For the meaning of 'company' in the Companies Act 1985 see s 735(1)(a).

2 Ibid s 35(1) (substituted by the Companies Act 1989 s 108(1)). The operation of the Companies Act 1985 s 35 (as substituted) is restricted by the Charities Act 1993 s 65(1) in relation to companies which are charities: see the Companies Act 1985 s 35(4) (as substituted and amended). As to the right of a member of the company to restrain the doing of an act which, but for s 35(1) (as substituted), would be beyond its capacity see s 35(2) (as substituted). As to the application of s 35 (as substituted) to unregistered companies see COMPANIES.

3 For the meaning of 'deal with' a company see ibid s 35A(2)(a) (as added).

4 As to when a person is presumed to have acted in good faith see ibid s 35A(2)(c) (as added).

5 Companies Act 1985 s 35A(1) (added by the Companies Act 1989 s 108(1)). The operation of the Companies Act 1985 s 35A (as added) is restricted by the Charities Act 1993 s 65(1) and the Companies Act 1989 s 112(3) in relation to companies which are charities: see the Companies Act 1985 s 35A(6) (as added and amended). As to the right of a member of the company to restrain the doing of an act which is beyond the powers of the directors see s 35A(4) (as added and amended).

6 Ibid s 35B (added by the Companies Act 1989 s 108(1)). As to the application of the Companies Act 1985 s 35B (as added) to unregistered companies see COMPANIES.

7 See the Friendly Societies Act 1992 ss 8, 9; and FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARAS 2120, 2122.

8 See eg *Guinness Mahon & Co Ltd v Kensington and Chelsea Royal London Borough Council* [1999] QB 215, [1998] 2 All ER 272, CA (interest rate swap agreements were ultra vires the local authority and therefore void ab initio). As to the doctrine of ultra vires see further COMPANIES vol 14 (2009) PARA 259 et seq; and as to transactions which are within the scope of the constitution of the corporation but have been entered into by the directors or other officers without authority see PARA 1236 post. As to the application of the doctrine of ultra vires to the actions of local authorities see LOCAL GOVERNMENT vol 69 (2009) PARA 461; and the cases cited in para 1231 note 19 ante.

9 *Ashbury Railway Carriage and Iron Co v Riche* (1875) LR 7 HL 653 at 672; *Shrewsbury and Birmingham Rly Co v North Western Rly Co* (1857) 6 HL Cas 113; *Sinclair v Brougham* [1914] AC 398, HL; *York Corpn v Henry Leetham & Sons Ltd* [1924] 1 Ch 557 at 573 per Russell J; *Parke v Daily News Ltd* [1962] Ch 927, [1962] 2 All ER 929. As to the ratification of ultra vires acts see AGENCY vol 1 (2008) PARA 69; COMPANIES vol 14 (2009) PARA 278.

10 *York Corpn v Henry Leetham & Sons Ltd* [1924] 1 Ch 557. An ultra vires contract or promise may, however, be validated by a subsequent retrospective general statute: see *Shipton v Cardiff Corpn* (1917) 87 LKB 51.

11 *Great North-West Central Rly Co v Charlebois* [1899] AC 114 at 124, PC.

12 *South Yorkshire Rly and River Dun Co v Great Northern Rly Co* (1853) 9 Exch 55 at 84 per Parke B; cited with approval in *Shrewsbury and Birmingham Rly Co v North Western Rly Co* (1857) 6 HL Cas 113 at 137 per Lord Cranworth LC.

13 *Fairtitle d Mytton v Gilbert* (1787) 2 Term Rep 169; *British Mutual Banking Co v Charnwood Forest Rly Co* (1887) 18 QBD 714 at 719, CA, per Fay LJ; *Re Companies Acts, ex p Watson* (1888) 21 QBD 301 at 302 per Cave J.

14 Eg by issuing debentures which it has apparent power to issue and which appear lawful on the face of them. As to the nature of estoppel in pais see ESTOPPEL vol 16(2) (Reissue) PARAS 955, 1043 et seq.

15 *Webb v Herne Bay Comrs* (1870) LR 5 QB 642; *Higgs v Assam Tea Co* (1869) LR 4 Exch 387; *Re Romford Canal Co, Pocock's Claim, Trickett's Claim, Carew's Claim* (1883) 24 ChD 85; *Re Hercules Insurance Co, Brunton's Claim* (1874) LR 19 Eq 302; and see COMPANIES vol 15 (2009) PARA 1264.

16 See *Doe d Levy v Horne* (1842) 3 QB 757 (turnpike trustees).

17 *Preston Corpn v Fulwood Local Board* (1885) 2 TLR 134.

UPDATE

1232 Capacity

NOTE 1--Companies Act 1985 s 735(1)(a) replaced by Companies Act 2006 s 1(1): see COMPANIES vol 14 (2009) PARA 24.

NOTE 2--Companies Act 1985 s 35 replaced by Companies Act 2006 s 39: see COMPANIES vol 14 (2009) PARA 265.

NOTES 2, 5--Charities Act 1993 s 65 omitted: SI 2009/1941.

NOTES 3-6--Companies Act 1985 ss 35A, 35B replaced by Companies Act 2006 s 40: see COMPANIES vol 14 (2009) PARA 263.

NOTE 5--Companies Act 1989 s 112(3) amended: SI 2009/1941.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(2) LIMITATION OF POWERS/1233. Application to Parliament.

1233. Application to Parliament.

A corporation created for specific purposes by Act of Parliament, if not expressly or impliedly prohibited from doing so, has an incidental right to apply to Parliament for an extension or modification of its powers¹. Contracts entered into by it in furtherance of such an application are intra vires the corporation, although not expressly or impliedly mentioned in the Act². Where, however, such a corporation is empowered to promote bills in Parliament for its specific purposes, its power to apply to Parliament is limited to those purposes, as the express power negatives any implied powers which it may have otherwise possessed to promote a bill for any other purpose³. A corporation which is applying for a statute extending its powers may enter into a contract which is at the time ultra vires, but is authorised by the powers applied for, provided that the contract is made conditional on the powers being obtained⁴.

If the interests of a corporation are threatened by a bill promoted by others, it appears that it may lawfully use its funds in opposing the bill⁵.

1 *Bateman v Ashton-under-Lyne Corpn* (1858) 3 H & N 323.

2 See note 1 supra.

3 *A-G v London and Home Counties Joint Electricity Authority* [1929] 1 Ch 513; and see *A-G v Andrews* (1850) 2 Mac & G 225; *A-G v Eastlake* (1853) 11 Hare 205; *A-G v West Hartlepool Improvement Comrs* (1870) LR 10 Eq 152; *A-G v West Riding of Yorkshire Rivers Board* (1905) 69 JP 177. As to the principle that the court will restrain the using of funds in an improper application to Parliament see *A-G v London and Home Counties Joint Electricity Authority* supra; *A-G v Andrews* supra; *A-G v Eastlake* supra; *A-G v West Hartlepool Improvement Comrs* supra; *A-G v West Riding of Yorkshire Rivers Board* supra; and see PARA 1231 note 8 ante.

4 *Taylor v Chichester and Midhurst Rly Co* (1870) LR 4 HL 628.

5 See *A-G v Andrews* (1850) 2 Mac & G 225; *A-G v Eastlake* (1853) 11 Hare 205 (power of commissioners); *R v White* (1884) 14 QBD 358 (power of overseers). It has been held not to be illegal or a fraud on Parliament for a company to agree to withdraw opposition to a bill: *Shrewsbury and Birmingham Rly Co v London and North Western Rly Co etc* (1850) 2 Mac & G 324.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(2) LIMITATION OF POWERS/1234. Modification or waiver of powers or obligations.

1234. Modification or waiver of powers or obligations.

Where a corporation is restricted by the statute as to its dealings with its property, the restriction is absolute, and cannot be modified or waived by the members of the corporation, even though they are all unanimously in favour of modification or waiver¹. Thus a corporation which is authorised to raise money for a specific purpose cannot, even with the consent of all its members, apply that money for any other purpose².

Where a statutory obligation is imposed requiring a corporation to deal with its property in a particular way, a contract by the corporation by which it agrees to deal with the property otherwise than in accordance with the obligation is ultra vires, even though the obligation was imposed for the protection of a private person and not of the public and is capable of being released by agreement between the corporation and that person³.

A corporation which is entrusted by the legislature with certain powers and duties expressly or impliedly for public purposes cannot divest itself of those powers and duties⁴. It cannot enter into any contract or take any action incompatible with the due exercise of its powers or the discharge of its duties⁵. This principle does not, however, prevent a corporation from entering into a disposition in exercise of a statutory power notwithstanding that the disposition may pro tanto exclude the exercise of other statutory powers in respect of the subject matter of the disposition⁶.

If a corporation is merely empowered by the legislature to do an act, it will not be compelled to do it, even though the act is for the public good and is partially completed⁷. If, however, it is clear that the legislature intended that the whole work should be done, the court, at the instance of a member, may restrain the application of the corporate funds in the construction of a portion only⁸.

1 *Baroness Wenlock v River Dee Co* (1883) 36 ChD 675n, CA (on appeal (1885) 10 App Cas 354, HL); *Mann v Edinburgh Northern Tramways Co* [1893] AC 69, HL.

2 *Bagshaw v Eastern Union Rly Co* (1849) 7 Hare 114 (affd (1850) 2 Mac & G 389); *Colman v Eastern Counties Rly Co* (1846) 10 Beav 1; *Salomons v Laing* (1850) 12 Beav 339 at 352; *East Anglian Rlys Co v Eastern Counties Rly Co* (1851) 11 CB 775. Cf COMPANIES vol 14 (2009) PARA 253.

3 *Corbett v South Eastern and Chatham Rlys Managing Committee* [1906] 2 Ch 12, CA; cf *A-G v North Eastern Rly Co* [1915] 1 Ch 905, CA (an obligation expressed to be for the protection of a navigation company, which was also in part for the benefit of the public, could not be varied by agreement with the navigation company).

4 *William Cory & Son Ltd v London Corpn* [1951] 2 KB 476 at 485, [1951] 2 All ER 85 at 89, CA (citing *York Corpn v Henry Leetham & Sons Ltd* [1924] 1 Ch 557); and see the cases cited in note 5 infra.

5 *Birkdale District Electric Supply Co Ltd v Southport Corpn* [1926] AC 355 at 364, HL, per Lord Birkenhead; *Ayr Harbour Trustees v Oswald* (1883) 8 App Cas 623 at 634, HL; *Sudbury Corpn v Empire Electric Light and Power Co Ltd* [1905] 2 Ch 104; *Re Staines UDC's Agreement, Triggs v Staines UDC* [1969] 1 Ch 10, [1968] 2 All ER 1 (public authority unable to contract not to exercise statutory power of compulsory acquisition); but cf *Stourcliffe Estates Co Ltd v Bournemouth Corpn* [1910] 2 Ch 12, CA (where it was held, distinguishing *Ayr Harbour Trustees v Oswald* supra, that, where a corporation purchases lands by agreement for a purpose authorised by certain of its statutory powers, there is nothing to prevent it from entering into covenants restricting the use which it might make of the lands under other powers also given to it for the benefit of the public, provided that such restrictions do not prevent the user of the lands for the particular purpose for which they were acquired); *British Transport Commission v Westmorland County Council* [1958] AC 126, [1957] 2 All ER 353, HL (statutory corporation may dedicate a right of way to the public if dedication is not incompatible with the statutory purposes for which the corporation acquired the land); *Earl of Leicester v Wells-next-the-Sea UDC* [1973] Ch 110, [1972] 3 All ER 77. See also LOCAL GOVERNMENT vol 69 (2009) PARA 460.

6 *Dowty Boulton Paul Ltd v Wolverhampton Corpn* [1971] 2 All ER 277, [1971] 1 WLR 204.

7 *York and North Midland Rly Co v R* (1853) 1 E & B 858, Ex Ch; *Edinburgh, Perth and Dundee Rly Co v Phillip* (1857) 2 Macq 514, HL; *R v Great Western Rly Co* (1893) 62 LJQB 572, CA. For a decision to the contrary effect see, however, *R v Eastern Counties Rly Co* (1839) 10 Ad & El 531.

8 *Cohen v Wilkinson* (1849) 1 Mac & G 481.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(2) LIMITATION OF POWERS/1235. Construction of general powers.

1235. Construction of general powers.

General words in the constitution of an incorporated body which, if construed literally, would virtually enable the corporation to carry on any business or undertaking of any kind whatever will be construed as ancillary to the dominant or main objects for which the corporation was formed¹.

Special powers given either to directors or to a majority of a corporation by its constitution, whether statutory or otherwise, however absolute in terms, are always to be construed as subject to a paramount and inherent restriction that they are to be exercised in subjection to the special purposes of the original bond of association².

A body corporate, being an entity separate from its members and not being a physical person, acts by agents, and, subject to the provisions of any statute, the ordinary law of agency applies to regulate their authority, their fiduciary position, delegation, and liability for their acts³.

1 *Re German Date Coffee Co* (1882) 20 ChD 169 at 188, CA; *Stephens v Mysore Reefs (Kangundy) Mining Co Ltd* [1902] 1 Ch 745; and see the comments on the latter case in *Pedlar v Road Block Gold Mines of India Ltd* [1905] 2 Ch 427 at 437 per Warrington J. See also *Re Introductions Ltd, Introductions Ltd v National Provincial Bank Ltd* [1970] Ch 199, [1969] 1 All ER 887, CA; and COMPANIES vol 14 (2009) PARAS 256, 258.

2 *Pickering v Stephenson* (1872) LR 14 Eq 322 at 340 per Wickens V-C.

3 See eg *Ferguson v Wilson* (1866) 2 Ch App 77 at 89. As to delegation of directors' powers see COMPANIES vol 14 (2009) PARA 537; as to directors as trustees see COMPANIES vol 14 (2009) PARA 539; and as to directors as agents see COMPANIES vol 14 (2009) PARA 544. As to delegation by agents see AGENCY vol 1 (2008) PARA 48 et seq; as to contractual relations see AGENCY vol 1 (2008) PARA 125 et seq; and as to liability in tort see AGENCY vol 1 (2008) PARA 150 et seq. As to liability of a corporation in contract see PARA 1269 et seq post; and as to liability in tort see PARA 1275 et seq post. As to the delegation of the powers of a corporation see PARA 1224 ante. As to the exercise of administrative powers by public bodies see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 20 et seq.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(2) LIMITATION OF POWERS/1236. Notice of constitution of corporation.

1236. Notice of constitution of corporation.

Where a corporation is constituted by a public Act of Parliament, all persons and corporations are presumed to know the nature and extent of its powers¹. The same rule applies to companies whose articles and memoranda of association or trust deeds are registered in accordance with statutory requirements², and to incorporated building societies³. Hence, if there is anything to be done which may be done by the officers of such a corporation under certain limited powers only, the person who deals with those officers must see that those limited powers are not being exceeded⁴. Similarly, when an act has not by the constitution of the corporation been put within its powers except on the fulfilment of a condition, the persons dealing with the corporation are bound to ascertain whether the condition has been fulfilled⁵. The above-mentioned rule has, however, been very substantially modified in its application to companies (including certain unregistered companies) regulated by the Companies Act 1985⁶.

A person dealing in good faith with a corporation or its agents is not bound to see that the private internal regulations of the corporation are duly carried out⁷, as, for example, that the persons purporting to act as its directors have been duly appointed⁸ or authorised⁹, or that a proper quorum was formed on a particular occasion¹⁰. Where, however, the regulations are statutory, as, for example, where directors of a company exercise powers under the Companies Clauses Consolidation Act 1845, it is prudent to ascertain that the statutory requirements have in fact been complied with¹¹.

1 *Macgregor v Dover and Deal Rly Co* (1852) 18 QB 618 at 631, Ex Ch, per Alderson B; *Balfour v Ernest* (1859) 5 CBNS 601; *County of Gloucester Bank v Rudry Merthyr Steam and House Coal Colliery Co* [1895] 1 Ch 629, CA; *Biggerstaff v Rowatt's Wharf Ltd* [1896] 2 Ch 93, CA.

2 *Ernest v Nicholls* (1857) 6 HL Cas 401 at 419 per Lord Wensleydale; and see COMPANIES vol 14 (2009) PARA 266.

3 *Chapleo v Brunswick Permanent Building Society* (1881) 6 QBD 696 at 712-713, CA, per Baggallay LJ; and see FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 1973.

4 *Fountaine v Carmarthen Rly Co* (1868) LR 5 Eq 316 at 322 per Page Wood V-C; *Irvine v Union Bank of Australia* (1877) 2 App Cas 366, PC.

5 *Pacific Coast Coal Mines Ltd v Arbuthnot* [1917] AC 607 at 616, PC.

6 See PARA 1232 ante; and COMPANIES vol 14 (2009) PARA 265 et seq. See also the Friendly Societies Act 1992 ss 8, 9; and FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARAS 2120, 2122.

7 *Royal British Bank v Turquand* (1856) 6 E & B 327, Ex Ch; *Agar v Official Manager of Athenaeum Life Assurance Society* (1858) 3 CBNS 725; *Nowell v Worcester Corpn* (1854) 9 Exch 457; *Bill v Darenth Valley Rly Co* (1856) 1 H & N 305; *Re Land Credit Co of Ireland, ex p Overend, Gurney & Co* (1869) 4 Ch App 460. See also COMPANIES vol 14 (2009) PARA 2665.

8 *Totterdell v Fareham Blue Brick and Tile Co* (1866) LR 1 CP 674; *Mahony v East Holyford Mining Co* (1875) LR 7 HL 869; *Duck v Tower Galvanizing Co* [1901] 2 KB 314, DC; *Re County Life Assurance Co* (1870) 5 Ch App 288.

9 *Biggerstaff v Rowatt's Wharf Ltd* [1896] 2 Ch 93, CA; *Dey v Pullinger Engineering Co* [1921] 1 KB 77, DC.

10 *County of Gloucester Bank v Rudry Merthyr Steam and House Coal Colliery Co* [1895] 1 Ch 629, CA. See also PARA 1205 ante.

11 *D'Arcy v Tamar, Kit Hill and Callington Rly Co* (1866) LR 2 Exch 158. As to the powers and liabilities of the directors of a company regulated by the Companies Clauses Acts see COMPANIES vol 15 (2009) PARA 1762 et seq.

UPDATE

1236 Notice of constitution of corporation

TEXT AND NOTE 6--Companies Act 1985 replaced for the most part by Companies Act 2006.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(2) LIMITATION OF POWERS/1237. Extent of liability on bills of exchange etc.

1237. Extent of liability on bills of exchange etc.

A corporation has no general power to incur liability on bills of exchange or promissory notes¹, but it may draw cheques on its current account at a bank². Whether a corporation may incur

liability on a bill of exchange or promissory note depends on whether the constitution of the corporation expressly or by implication confers that power³. The Companies Act 1985 does not confer that power on companies as an incident of incorporation under its provisions but leaves the existence of the power to be determined on the proper construction of the memorandum and articles of association⁴. In the case of a trading corporation the existence of the power will be implied⁵.

Wherever a corporation is authorised to draw and accept bills of exchange, the holder has the same remedy against the corporation which he would have against a natural person who is a party to a bill⁶; and where a promissory note, issued by a corporation, is apparently valid on the face of it, a holder in due course may sue the corporation on it, though certain private formalities required by the constitution of the corporation have not been complied with, provided that the holder was not aware that the private formalities were requisite⁷.

It is sufficient if any negotiable instrument is sealed with the corporate seal, although it is not necessary that it should be under seal⁸. Where the instrument is signed by an agent on the corporation's behalf, the corporation will be liable thereon to a holder in due course if he might under the constitution of the corporation have been authorised to sign, although he has not in fact been so authorised⁹. Where, however, a cheque, not purporting on the face of it to be drawn on behalf of the corporation, is fraudulently and without authority signed by persons who usually sign cheques on behalf of the corporation, it will not be liable on the cheque¹⁰.

1 Nothing in the Bills of Exchange Act 1882 s 22(1) enables a corporation to make itself liable as drawer, acceptor, or indorser of a bill unless it is competent to it so to do under the law for the time being in force relating to corporations: s 22(1) proviso; *Bateman v Mid-Wales Rly Co* (1866) LR 1 CP 499; *Peruvian Rlys Co v Thames and Mersey Marine Insurance Co, Re Peruvian Rlys Co* (1867) 2 Ch App 617; and see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1466.

2 *Serrell v Derbyshire, Staffordshire and Worcestershire Junction Rly Co* (1850) 9 CB 811; *Bateman v Mid-Wales Rly Co* (1866) LR 1 CP 499 at 506; and see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 882.

3 *Bateman v Mid-Wales Rly Co* (1866) LR 1 CP 499; *Peruvian Rlys Co v Thames and Mersey Insurance Co, Re Peruvian Rlys Co* (1867) 2 Ch App 617; *Slark v Highgate Archway Co* (1814) 5 Taunt 792; *Murray v East India Co* (1821) 5 B & Ald 204.

4 See *Peruvian Rlys Co v Thames and Mersey Insurance Co, Re Peruvian Rlys Co* (1867) 2 Ch App 617 at 623 per Lord Cairns.

5 *Broughton v Manchester and Salford Waterworks Co* (1819) 3 B & Ald 1 at 12 per Best J. The term 'trading' is in this context used in a restricted sense as meaning buying and selling: see *Bateman v Mid-Wales Rly Co* (1866) LR 1 CP 499 at 512-513 per Montague Smith J. Mining companies, waterworks companies, salt companies, and many others, have all been held not to have an implied power: see COMPANIES vol 14 (2009) PARA 292.

6 *Murray v East India Co* (1821) 5 B & Ald 204 at 204, 210.

7 *Allen v Sea, Fire and Life Assurance Co* (1850) 9 CB 574; *Re Land Credit Co of Ireland, ex p Overend, Gurney & Co* (1869) 4 Ch App 460; and see PARA 1236 ante.

8 See the Bills of Exchange Act 1882 s 91(2). The same principle applies to instruments which do not fall within the Act: *Bechuanaland Exploration Co v London Trading Bank* [1898] 2 QB 658. For the meaning of 'negotiable instrument' see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1402.

9 *Dey v Pullinger Engineering Co* [1921] 1 KB 77, DC (dissenting from *Premier Industrial Bank Ltd v Carlton Manufacturing Co Ltd and Crabtree Ltd* [1909] 1 KB 106). As to the application of the rule stated in the text and qualifications of that rule see COMPANIES vol 14 (2009) PARAS 293-294.

10 *Serrell v Derbyshire, Staffordshire and Worcestershire Junction Rly Co* (1850) 9 CB 811.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(2) LIMITATION OF POWERS/1238. Extent of borrowing powers.

1238. Extent of borrowing powers.

Prima facie a commercial or trading corporation has an implied power to borrow money for the purposes of its business¹; in the case of other corporations no such implication arises² and the question as to their powers in this connection must, except in so far as otherwise provided by statute³, be determined by reference to their constitution⁴. A person contemplating a borrowing transaction must, except in so far as otherwise provided by statute, satisfy himself by looking at the constitution of the corporation whether it has power to borrow or not, but he need not go further or inquire whether any private regulations or conditions have been complied with⁵.

The borrowing powers of a corporation may be restricted either by express terms or by necessary implication in its constitution⁶. Where a corporation is created by Act of Parliament which empowers it to borrow a certain sum of money, a restriction against borrowing more will be implied⁷.

Subject to the statutory protection afforded to persons dealing with a company regulated by the Companies Act 1985⁸, persons dealing with a corporation having a limited power of borrowing are put on inquiry whether that limit is being exceeded⁹ but not as to how the money borrowed is to be applied¹⁰.

Although, in cases where the statutory protection¹¹ does not apply, an ultra vires borrowing on behalf of a corporation does not give rise to any indebtedness on its part, the lender is entitled to repayment of the loan as money paid for no consideration¹². The corporation does not, however, hold the unlawfully borrowed money on trust for the lender and the lender is not entitled to equitable remedies such as tracing¹³. Nor is the lender entitled to subrogation if the money is used to discharge the debt due to a secured creditor¹⁴ or to a lien if the money is used to buy land¹⁵.

1 *General Auction, Estate and Monetary Co v Smith* [1891] 3 Ch 432; *Re Badger, Mansell v Viscount Cobham* [1905] 1 Ch 568 at 574. It has been held that a corporation may secure a loan by the following methods: mortgage of ships by a shipping company (*Australian Auxiliary Steam Clipper Co Ltd v Mounsey* (1858) 4 K & J 733); deposit of deeds by a manufacturing company entitled to acquire and dispose of land (*Re Patent File Co, ex p Birmingham Banking Co* (1870) 6 Ch App 83); bill of sale by a trading company (*Shears v Jacob* (1866) LR 1 CP 513); overdraft on bankers by a building society (*Cunliffe Brooks & Co v Blackburn Benefit Society* (1884) 9 App Cas 857, HL); mortgage of uncalled capital by a manufacturing company empowered to mortgage any of its property or rights (*Re Patent Ivory Manufacturing Co, Howard v Patent Ivory Manufacturing Co* (1888) 38 ChD 156; *Re Pyle Works* (1890) 44 ChD 534, CA). Where property is legally conveyed to a corporation as security for a loan, the property passes to the corporation notwithstanding that the corporation is forbidden by its constitution to advance a loan on that kind of property: *Ayers v South Australian Banking Co* (1871) LR 3 PC 548 at 558. See further COMPANIES vol 15 (2009) PARA 1256.

2 *Re Badger, Mansell v Viscount Cobham* [1905] 1 Ch 568.

3 *R v Reed* (1880) 5 QBD 483, CA (school board); *A-G v De Winton* [1906] 2 Ch 106. See also *A-G v West Ham Corp* [1910] 2 Ch 560 (where the corporation, having statutory powers to borrow for specified purposes, obtained an overdraft from its bank limited to its unexhausted borrowing powers, but applied the moneys so received for the purposes of all its undertakings indiscriminately, and this borrowing was held to be illegal).

4 As to the statutory modifications of this rule in relation to companies, including certain unregistered companies, regulated by the Companies Act 1985 and friendly societies incorporated under the Friendly Societies Act 1992 see PARA 1232 ante.

5 *Royal British Bank v Turquand* (1856) 6 E & B 327, Ex Ch; *County of Gloucester Bank v Rudry Merthyr Steam and House Coal Colliery Co* [1895] 1 Ch 629, CA; *Re Hampshire Land Co* [1896] 2 Ch 743; *Re Bank of Syria, Owen and Ashworth's Claim* [1900] 2 Ch 272 (on appeal [1901] 1 Ch 115, CA); *Duck v Tower Galvanizing Co* [1901] 2 KB 314.

6 *Baroness Wenlock v River Dee Co* (1885) 10 App Cas 354 at 362, HL, per Lord Watson; and see *Chapleo v Brunswick Building Society* (1881) 6 QBD 696, CA (an unincorporated society, but it is presumed that the reasoning there applied would be equally applicable to the case of a corporation).

7 *Baroness Wenlock v River Dee Co* (1883) 36 ChD 675n, CA; on appeal (1885) 10 App Cas 354, HL.

8 See PARA 1232 ante.

9 *Chapleo v Brunswick Building Society* (1881) 6 QBD 696, CA; and see *Re Companies Acts, ex p Watson* (1888) 21 QBD 301 at 305 per Wills J.

10 *Re David Payne & Co Ltd, Young v David Payne & Co Ltd* [1904] 2 Ch 608, CA.

11 See the text and note 8 supra.

12 *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1994] 4 All ER 890, [1994] 1 WLR 938, CA (revsd on other grounds [1996] AC 669, [1996] 2 All ER 961, HL). In view of this decision it appears to be no longer necessary to rely on the earlier cases establishing the principle that moneys borrowed ultra vires could be recovered in so far as they were applied in discharging the borrower's debts: see *Baroness Wenlock v River Dee Co* (1883) 36 ChD 675n, CA (affd (1885) 10 App Cas 354, HL); *Baroness Wenlock v River Dee Co* (1887) 19 QBD 155, CA; *Re Wrexham, Mold and Connah's Quay Rly Co* [1899] 1 Ch 440, CA; *Sinclair v Brougham* [1914] AC 398 at 440, HL, per Lord Parker of Waddington. See also *Guinness Mahon & Co Ltd v Kensington and Chelsea Royal London Borough Council* [1999] QB 215, [1998] 2 All ER 272, CA.

13 *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] AC 669, [1996] 2 All ER 961, HL (not following *Sinclair v Brougham* [1914] AC 398, HL). Nor is there an entitlement to compound interest on the sum due: *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* supra.

14 *Re Wrexham, Mold and Connah's Quay Rly Co* [1899] 1 Ch 440, CA; cf *Neath Building Society v Luce* (1889) 43 ChD 158.

15 *Orakpo v Manson Investments Ltd* [1978] AC 95, [1977] 3 All ER 1, HL. As to lien generally see LIEN.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(2) LIMITATION OF POWERS/1239. Merger by purchase of shares.

1239. Merger by purchase of shares.

Unless expressly authorised to do so, a corporation cannot enter into any arrangement with another corporation or body which would substantially result in an amalgamation¹. It is, as a general rule, beyond the powers of one trading corporation to become a shareholder in another, or to apply its funds for that purpose, unless it is expressly authorised by its constitution to do so². Even if a company is authorised by its constitution to invest its funds in the purchase of shares in other companies, a transaction with another company which amounts to an entering into a new contract of partnership with new persons under a new constitution will be absolutely ultra vires and void unless specially provided for and authorised³. Although it would be ultra vires for a banking company to buy, as a speculation, shares in another company, it may take a transfer into its own name of shares in another company held by it as security in the ordinary course of its business⁴.

1 *Greenwich Pier Co v Thames River Conservators* (1905) 21 TLR 669; *Re Great Northern Rly Co and Great Central Rly Co* (1908) 24 TLR 417, CA. See further COMPANIES vol 15 (2009) PARA 1435. As to amalgamation see PARA 1240 post.

2 *Salomons v Laing* (1850) 12 Beav 339; *Re Barned's Banking Co, ex p Contract Corp'n* (1867) 3 Ch App 105 at 112 per Lord Cairns LJ; and see *Great Eastern Rly Co v Turner* (1872) 8 Ch App 149 at 152 per Lord Selborne LC. See also PARA 1147 text and note 3 ante; and COMPANIES vol 14 (2009) PARA 260.

3 *Re European Society Arbitration Acts, ex p British Nation Life Assurance Association (Liquidators)* (1878) 8 ChD 679 at 704, CA; and see *Joint Stock Discount Co v Brown* (1869) LR 8 Eq 381.

4 *Re Asiatic Banking Corpn, Royal Bank of India's Case* (1869) 4 Ch App 252. Modern banking companies should have extensive powers to buy, sell, hold, invest and deal in securities of other companies.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(2) LIMITATION OF POWERS/1240. Amalgamation.

1240. Amalgamation.

Amalgamation in the strict sense, that is to say the combination of two or more corporations into a single body which becomes the universal successor to the liabilities as well as the assets of its predecessors, is not generally possible because of the principle that contractual liabilities cannot be assigned without the consent of the other party¹. There is, however, statutory provision for the amalgamation of building societies², incorporated friendly societies³ and industrial and provident societies⁴. The Companies Act 1985 contains provisions for facilitating company reconstruction or amalgamation where an arrangement is proposed between a company and its creditors or members, or any class of them⁵. Authority may also be given by statute for an amalgamation in a particular case⁶.

1 See CONTRACT vol 9(1) (Reissue) PARA 757.

2 See the Building Societies Act 1986 s 93, Sch 16 (both as amended); and FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARAS 1922-1923.

3 See the Friendly Societies Act 1992 s 85, Sch 15 (both as amended); and FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 2352.

4 See the Industrial and Provident Societies Act 1965 ss 50, 52 (both as amended); and FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 2561 et seq.

5 See the Companies Act 1985 s 425 (as amended), s 427A (as added and amended), Sch 15B (as added and amended); and COMPANIES.

6 See eg the Trustee Savings Bank Act 1985 s 3 (as amended); and FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 809. See also eg the National Westminster Bank Act 1969 and the University of Manchester Act 2004 (both of which are private Acts).

UPDATE

1240 Amalgamation

TEXT AND NOTE 5--Companies Act 1985 ss 425, 427A, Sch 15B replaced by Companies Act 2006 ss 896, 901-935, 938-941: see COMPANIES vol 15 (2009) PARAS 1426, 1449 et seq.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(2) LIMITATION OF POWERS/1241. Injunctions to restrain act beyond corporation's powers.

1241. Injunctions to restrain act beyond corporation's powers.

A corporation may be restrained by injunction from doing an act which is beyond its powers¹. The claim must, as a rule, in the case of a corporation exercising functions of a public nature,

be brought in the name of the Attorney General², on the relation of a relator, who is added for the purpose of being liable for costs³, although the relator, if entitled to it, may also claim relief in his own right⁴. He cannot, however, claim relief inconsistent with that claimed by the Attorney General⁵.

Where the act of the corporation specially affects the right of an individual, he may bring the claim in his own name⁶; and, if it should subsequently appear that the Attorney General is a necessary party, he may then, with his consent, be added⁷.

The power of members of a corporation to restrain it from doing an act which is beyond its powers or from otherwise acting improperly is dealt with elsewhere⁸.

1 For examples see *A-G v Great Northern Rly Co* (1860) 1 Drew & Sm 154 (railway company carrying on business of coal merchants); *Lyde v Eastern Bengal Rly Co* (1866) 36 Beav 10 at 14 (railway company cannot become steamboat company or carry on brewery or the like); *Great Western Rly Co v Metropolitan Rly Co* (1863) 32 LJ Ch 382 at 386 per Wood V-C (company purchasing shares in another company); *A-G v Waterford Corpn* (1875) 9 IR Eq 522, CA (corporation applying money produced by rates and funds under its control towards the expenses of introducing bill into Parliament); *A-G v Manchester Corpn* [1906] 1 Ch 643 (municipal corporation engaging in business as carriers); *London County Council v A-G* [1902] AC 165, HL (ultra vires service of omnibuses); *A-G v Mersey Rly Co* [1907] AC 415, HL (ultra vires service of omnibuses); *A-G v De Winton* [1906] 2 Ch 106 (ultra vires borrowing); *A-G v West Gloucestershire Water Co* [1909] 2 Ch 338, CA (supply of water outside statutory limits); *Dundee Harbour Trustees v Nicol* [1915] AC 550, HL (harbour trustees letting out ferry steamers on hire for excursion trips); *Grieve v Edinburgh and District Water Trustees* 1918 SC 700, Ct of Sess (water trustees restrained from undertaking plumbers' business, although requested by military authorities in time of war); but see *Ryde Comrs v Isle of Wight Ferry Co* (1862) 30 Beav 616 (where it appeared that the act complained of, so far from producing any injury, would be a public convenience, and the court declined to interfere). See also the Companies Act 1985 s 35(2) (as added), s 35A(4) (as substituted). As to injunctions where a corporation is improperly promoting a bill see PARA 1231 note 8 ante; and as to injunctions against companies and other corporations, and injunctions to protect public rights, see CIVIL PROCEDURE vol 11 (2009) PARA 427 et seq.

2 *Stockport District Waterworks Co v Manchester Corpn* (1862) 9 Jur NS 266; *Watson v Hythe Borough Council* (1906) 70 JP 153; *A-G v London and North Western Rly Co* [1900] 1 QB 78, CA; *A-G v Birmingham, Tame and Rea District Drainage Board* [1912] AC 788, HL.

3 *A-G v Scott* [1905] 2 KB 160 at 162, CA; *A-G and Spalding RDC v Garner* [1907] 2 KB 480 at 485. The old common law rule that the Crown neither pays nor receives costs still applies in the case of relator actions: see the Administration of Justice (Miscellaneous Provisions) Act 1933 s 7(2); and CROWN PROCEEDINGS AND CROWN PRACTICE vol 12(1) (Reissue) PARAS 116, 136. Relator actions are now rare in practice: see CIVIL PROCEDURE vol 11 (2009) PARA 236.

4 *A-G v Barker* (1900) 83 LT 245.

5 *A-G v Earl of Durham* (1882) 46 LT 16.

6 *Prestney v Colchester Corpn and A-G* (1882) 21 ChD 111; *Clinch v Financial Corpn* (1868) 4 Ch App 117; *Rendall v Crystal Palace Co* (1858) 4 K & J 326; *Pickering v Stephenson* (1872) LR 14 Eq 322; *Bagshaw v Eastern Union Rly Co* (1850) 2 Mac & G 389; and see *Sampson v Smith* (1838) 8 Sim 272; *Spencer v London and Birmingham Rly Co* (1836) 8 Sim 193; *A-G v Great Northern Rly Co* (1860) 1 Drew & Sm 154; *Bonner v Great Western Rly Co* (1883) 24 ChD 1 at 8, CA. As to proceedings by members against the corporation see PARA 1291 post.

7 *Caldwell v Pagham Harbour Reclamation Co* (1876) 2 ChD 221; *A-G v Pontypridd Waterworks Co* [1908] 1 Ch 388.

8 See PARA 1291 post.

UPDATE

1241 Injunctions to restrain act beyond corporation's powers

NOTE 1--Companies Act 1985 s 35A(4) replaced by Companies Act 2006 s 40(4): see COMPANIES vol 14 (2009) PARA 263.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(2) LIMITATION OF POWERS/1242. When special damage must be shown.

1242. When special damage must be shown.

As a rule, it is not necessary for the Attorney General to show special damage to the public. It is usually sufficient if he can show that the company has transgressed, or is about to transgress, the powers conceded to it by the legislature¹; but the court may refuse to interfere if it is satisfied that the interest of the public does not require its assistance², or that the act complained of cannot be regarded in the light of a public injury³. In granting an injunction to restrain a public body from continuing a state of things which existed at the time of the commencement of its powers, the court looks at the balance of convenience⁴, but, if the act complained of is expressly forbidden, public convenience is not a material consideration⁵. It is no defence to a claim against a public body at the relation of the Attorney General to restrain a nuisance that the relators have powers which would enable them themselves to remedy the evil⁶.

When the claim is by a private person, he must show special damage to himself, actual or reasonably apprehended⁷, unless the act prohibited is obviously prohibited for his special protection⁸. On an interim application the court will take the interest of the public into consideration⁹, unless there has been a clear breach of an express provision of a contract or statute¹⁰. A simple contract creditor of a company is not entitled to an injunction to restrain a company from dealing with its assets, on the ground that he will be thereby defrauded¹¹.

1 *Liverpool Corpn v Chorley Waterworks Co* (1852) 2 De GM & G 852 at 860; *Ware v Regent's Canal Co* (1858) 3 De G & J 212 at 228; *A-G v Great Western Rly Co* (1872) 7 Ch App 767; *A-G v Cockermouth Local Board* (1874) LR 18 Eq 172; *A-G v Great Eastern Rly Co* (1879) 11 ChD 449 at 500, CA, per Baggallay LJ (on appeal (1880) 5 App Cas 473, HL); *A-G v Shrewsbury (Kingsland) Bridge Co* (1882) 21 ChD 752; *Bonner v Great Western Rly Co* (1883) 24 ChD 1 at 8, CA, per Baggallay LJ; *A-G v London and North Western Rly Co* [1900] 1 QB 78, CA; *LCC v A-G* [1902] AC 165, HL; *A-G v Mersey Rly Co* [1907] AC 415, HL; *A-G v Frimley and Farnborough District Water Co* [1908] 1 Ch 727, CA; *A-G v West Gloucestershire Water Co* [1909] 2 Ch 338, CA.

The law will be dealt with as it exists, and the possibility of further powers being granted will not be taken into account: *Great Western Rly Co v Metropolitan Rly Co* (1863) 32 LJ Ch 382. Where the act complained of has been declared by a competent authority to be illegal, the court will grant an injunction at the instance of the Attorney General without considering the grounds on which it has been declared illegal: *A-G v Oxford, Worcester and Wolverhampton Rly Co* (1854) 2 WR 330. Statutory provisions enacted expressly for the protection of an individual may also involve the public interest, and so be enforced at the suit of the Attorney General: *A-G v North Eastern Rly Co* [1915] 1 Ch 905, CA. As to proceedings by the Attorney General to protect public rights see CIVIL PROCEDURE vol 11 (2009) PARA 491 et seq.

2 *A-G v Birmingham and Derby Junction Rly Co* (1840) 2 Ry & Can Cas 124 at 132.

3 *A-G v Birmingham and Oxford Junction Rly Co* (1851) 3 Mac & G 453; *A-G v Great Eastern Rly Co* (1879) 11 ChD 449 at 484-485 per James LJ; and see *A-G v Birmingham, Tame and Rea District Drainage Board* [1910] 1 Ch 48, CA (affd [1912] AC 788, HL).

4 *A-G v Dorking Guardians* (1882) 20 ChD 595 at 607, CA.

5 *A-G v London and North Western Rly Co* [1900] 1 QB 78, CA; *Cromford and High Peak Co v Stockport, Disley and Whaley Bridge Co* (1857) 24 Beav 74.

6 *A-G v Colney Hatch Asylum* (1868) 4 Ch App 146.

7 *Chamberlaine v Chester and Birkenhead Rly Co* (1848) 1 Exch 870; *Holyoake v Shrewsbury and Birmingham Rly Co* (1848) 5 Ry & Can Cas 421; *Liverpool Corpn v Chorley Waterworks Co* (1852) 2 De GM & G 852; *Ware v Regent's Canal Co* (1858) 3 De G & J 212; *Stockport District Waterworks Co v Manchester Corpn*

(1862) 7 LT 545; *Pudsey Coal Gas Co v Bradford Corp* (1873) LR 15 Eq 167; *Nuneaton Local Board v General Sewage Co* (1875) LR 20 Eq 127; *Bonner v Great Western Rly Co* (1883) 24 ChD 1, CA; *London Association of Shipowners and Brokers v London and India Docks Joint Committee* [1892] 3 Ch 242, CA; *Marriott v East Grinstead Gas and Water Co* [1909] 1 Ch 70; *Dover Picture Palace Ltd and Pessers v Dover Corp and Crundall, Wraith, Gurr and Knight* (1913) 11 LGR 971, CA. If an individual has sustained no damage and there is no reason to apprehend that he will do so, he cannot sue, notwithstanding that he is nearer to the possible cause of injury than the rest of the public: *Ware v Regent's Canal Co* supra at 228 per Lord Chelmsford LC.

8 *Chamberlaine v Chester and Birkenhead Rly Co* (1848) 1 Exch 870 at 877 per Pollock CB; and see *Cromford and High Peak Rly Co v Stockport, Disley and Whaley Bridge Rly Co* (1857) 24 Beav 74; *A-G v North Eastern Rly Co* [1915] 1 Ch 905, CA; *Birr RDC v Birr UDC* [1915] 1 IR 413. For the cases in which injunctions will be granted in connection with the compulsory acquisition of land by public bodies in pursuance of their statutory powers see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 526.

9 *Lyde v Eastern Bengal Rly Co* (1866) 36 Beav 10 at 17 (interference with a railway); and see *Rigby v Great Western Rly Co* (1846) 2 Ph 44. See also *Bradbury v London Borough of Enfield* [1967] 3 All ER 434, [1967] 1 WLR 1311, CA (enforcement of statutory duty to maintain schools).

10 See *A-G v London and North Western Rly Co* [1900] 1 QB 78, CA; *Cromford and High Peak Co v Stockport, Disley and Whaley Bridge Co* (1857) 24 Beav 74.

11 *Mills v Northern Rly of Buenos Ayres Co* (1870) 5 Ch App 621.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(2) LIMITATION OF POWERS/1243. Liability of officers and directors.

1243. Liability of officers and directors.

Where the officers or directors of a corporation or company actively participate in an act which it is beyond the powers of the corporation to perform, they are each, to the extent of his participation, liable personally for the consequences¹.

1 *Young v Naval, Military and Civil Service Co-operative Society of South Africa* [1905] 1 KB 687 (following *Cullerne v London and Suburban General Permanent Building Society* (1890) 25 QBD 485, CA). As to the liability of an agent for breach of warranty of authority see AGENCY vol 1 (2008) PARAS 160-161; and as to the liability of directors etc on signed bills of exchange see COMPANIES vol 14 (2009) PARA 295. See generally COMPANIES vol 14 (2009) PARA 585 et seq. As to the appointment, powers and duties of officers of corporations see PARA 1154 et seq ante.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(2) LIMITATION OF POWERS/1244. Breach of trust.

1244. Breach of trust.

A corporation will not be allowed to exercise a power or execute a trust corruptly¹. When an account of trust property is taken by the court against a corporation in a case where the corporation has committed a breach of trust, the court will be disposed to put as lenient a construction as possible on the act of the corporation; but, a corporation being one and the same body for all times, it will be no defence to plead that the members who composed the corporation when the breach of trust was committed have long ceased to exist².

Where a judgment has been obtained against a corporation for breach of trust, the court will not charge the loss, if any, against the property generally of the corporation, or make an order the effect of which would be to subject all the corporate property to minute scrutiny and examination, but will leave the claimant to his remedy by the usual process in such cases³.

1 *Dummer v Chippenham Corpn* (1807) 14 Ves 245 at 252. See generally TRUSTS vol 48 (2007 Reissue) PARA 798 et seq.

2 *A-G v Newbury Corpn* (1834) 3 My & K 647.

3 *A-G v East Retford Corpn* (1838) 3 My & Cr 484.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(3) OWNERSHIP OF PROPERTY/(i) In general/1245. Nature of ownership.

(3) OWNERSHIP OF PROPERTY

(i) In general

1245. Nature of ownership.

A corporation is capable of owning property; but endowment is not essential to the legal existence of a corporation, however necessary it may be from a practical point of view¹. The individual members of a corporation are not legally owners of property in the possession of the corporation, although they are in a sense interested in it, as they may derive individual benefit from its increase, or loss from its destruction². Hence, they cannot do as they please with the property of the corporation but are bound by the constitution of the corporation to which they belong³. The corporation, may, however, use its funds for the purpose of resisting any attack on its existence, property, rights or privileges⁴, or for defending⁵ or indemnifying⁶ its servants.

1 *Sutton's Hospital Case* (1612) 10 Co Rep 1a, 23a, 31a, 32b, Ex Ch; but see at 28a.

2 *R v Arnaud* (1846) 9 QB 806 at 817-818.

3 *Society of Practical Knowledge v Abbott* (1840) 2 Beav 559 at 568 per Lord Langdale MR; *A-G v Galway Corpn* (1829) 1 Mol 95; *Bostock v North Staffordshire Rly Co* (1855) 4 E & B 798 at 829 per Wightman J.

4 *A-G v Brecon Corpn* (1878) 10 ChD 204.

5 *Breay v Royal British Nurses' Association* [1897] 2 Ch 272, CA.

6 *Peel v London and North Western Rly Co* [1907] 1 Ch 5 at 21, CA, per Buckley LJ.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(3) OWNERSHIP OF PROPERTY/(i) In general/1246. Trust ownership.

1246. Trust ownership.

As a general rule a corporation, aggregate¹ or sole², may hold property on trust³, either alone or jointly⁴ with one or more individuals⁵. There is no legal presumption that a legacy given to a corporation on trust for an unspecified or uncertain purpose is given to it as trustee for a charity⁶. A corporation whose purposes are exclusively charitable is not, in the strict sense, a trustee of its assets and is, therefore, the beneficial, as well as the legal, owner of those assets⁷.

Where the property of a corporation is affected by a trust, the court has jurisdiction to deal with it, whether the corporation is lay or ecclesiastical⁸, and the corporation will be treated by the court as a natural person⁹.

Any appointment of a corporation sole as a custodian or other trustee or as a personal representative at a time when there was a vacancy in the office takes effect, on the vacancy being filled, as if it had been filled before the appointment was expressed to be made or was capable of taking effect, and is capable of being enforced, accepted, disclaimed or renounced by the person appointed to fill such vacancy¹⁰.

1 *A-G v Drapers' Co* (1843) 6 Beav 382; and see PARA 1253 post. For the meaning of 'corporation aggregate' see PARA 1109 ante.

2 *Tufnell v Constable* (1838) 7 Ad & El 798. For the meaning of 'corporation sole' see PARA 1111 ante.

3 See PARA 1253 post; and CHARITIES vol 8 (2010) PARA 235. As to the execution of trusts by trust corporations, and for the meaning of 'trust corporation', see TRUSTS vol 48 (2007 Reissue) PARA 798. Two or more trustees (if no trustee is a trust corporation) are required to give a valid receipt for the proceeds of sale or other capital money arising under a trust of land (see the Law of Property Act 1925 s 27(2) (as substituted and amended; and TRUSTS vol 48 (2007 Reissue) PARA 799) or for capital money arising under the Settled Land Act 1925 (see ss 18(1)(c), 94; and SETTLEMENTS vol 42 (Reissue) PARAS 312, 712). As to the necessity for two or more trustees to give a receipt except where a trustee is a trust corporation see also the Trustee Act 1925 s 14(2) (as amended); and TRUSTS vol 48 (2007 Reissue) PARA 1051.

4 A body corporate is capable of acquiring and holding any real or personal property in joint tenancy in the same manner as if it were an individual; and where a body corporate and an individual, or two or more bodies corporate, become entitled to any such property under circumstances or by virtue of any instrument which would, if the body corporate had been an individual, have created a joint tenancy, they are entitled to the property as joint tenants: Bodies Corporate (Joint Tenancy) Act 1899 s 1(1). However, the acquisition and holding of property by a body corporate in joint tenancy is subject to the like conditions and restrictions as attach to the acquisition and holding of property by a body corporate in severalty: s 1(1) proviso. Where a body corporate is joint tenant of any property, then on its dissolution the property devolves on the other joint tenant: s 1(2). See also *Re Thompson's Settlement Trusts*, *Thompson v Alexander* [1905] 1 Ch 229; and TRUSTS vol 48 (2007 Reissue) PARA 864.

5 The statement in the text was cited in *Bankes v Salisbury Diocesan Council of Education Inc* [1960] Ch 631 at 649, [1960] 2 All ER 372 at 379 per Russell J.

6 *Gloucester Corpn v Wood* (1843) 3 Hare 131; affd sub nom *Gloucester Corpn v Osborn* (1847) 1 HL Cas 272. The court will not presume that a corporation has held certain property in trust for a charity merely because for the last 90 years the rents of it have been applied for the same charitable purpose: *Gozna v Grantham Corpn* (1827) 3 Russ 261. Where a corporation constituted itself trustee of property belonging to a charity, it was ordered to account for the rents and profits of the charity estate for a period of 200 years: *A-G v Exeter Corpn* (1822) Jac 443.

7 *Liverpool and District Hospital for Diseases of the Heart v A-G* [1981] Ch 193, [1981] 1 All ER 994. As to the restrictions imposed on the powers of a body corporate to deal with its property and income if, as the result of the exercise of a power to alter its constitution, the body ceases to be a charity see the Charities Act 1993 s 64(1); and CHARITIES vol 8 (2010) PARA 238.

8 *A-G v St John's Hospital, Bedford* (1865) 2 De GJ & Sm 621.

9 *A-G v Governors of Foundling Hospital* (1793) 2 Ves 42 at 46.

10 Law of Property Act 1925 s 180(3). This applies to appointments made before, on or after 1 January 1926: s 180(3).

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(3) OWNERSHIP OF PROPERTY/(ii) Ownership of Land/1247. Right to acquire and hold land.

(ii) Ownership of Land

1247. Right to acquire and hold land.

A corporation aggregate¹ or sole² may acquire and hold land like a natural person. This has always been so at common law³, and the statutory restrictions on the power of corporations to take assurances of land without a licence in mortmain from the Crown have been repealed⁴. A corporation may be registered as the proprietor of an estate in or a charge over land⁵.

1 For the meaning of 'corporation aggregate' see PARA 1109 ante.

2 For the meaning of 'corporation sole' see PARA 1111 ante.

3 Grant, Law of Corporations 98, 626.

4 Repealed by the Charities Act 1960 ss 38, 48(2), Sch 7 Pt II (all repealed). See further CHARITIES vol 8 (2010) PARAS 82-83.

5 As to the procedure for registration of a corporation under the Land Registration Act 2002 as proprietor of land or a charge see the Land Registration Rules 2003, SI 2003/1417, r 181; and LAND REGISTRATION vol 26 (2004 Reissue) PARA 925. See also r 182 (registration of trustees of charitable, ecclesiastical or public trusts), r 183 (registration of other corporations).

UPDATE

1247 Right to acquire and hold land

NOTE 5--SI 2003/1417 r 181 revoked: SI 2008/1919.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(3) OWNERSHIP OF PROPERTY/(ii) Ownership of Land/1248. Ownership of land by corporation sole.

1248. Ownership of land by corporation sole.

Land may be granted to a corporation sole¹, and a corporation sole may acquire land under a will².

At common law, leaseholds could not be granted to a corporation sole in his corporate capacity, but only his natural capacity³, and, therefore, a lease granted to a corporation sole passed to his personal representatives and not to his successors⁴, but now by statute a leasehold vested in the occupant of a corporation sole for the benefit of the corporation will pass to his successors⁵.

Where there is or has been a vacancy in the office of a corporation sole at the time when, if there had been no vacancy, any interest in or charge on property would have been acquired by the corporation, the interest notwithstanding the vacancy vests and is deemed to have vested in the successor to the office on his appointment as a corporation sole, but without prejudice to the right of the successor to disclaim that interest or charge⁶.

Formerly, a grant had generally to be made to the corporation sole and his successors, otherwise the actual holder of the office took an estate for life in his natural capacity⁷. In conveyances and deeds executed after 31 December 1925, however, a conveyance of freehold land to a corporation sole by his corporate designation without the word 'successors' passes to

the corporation the fee simple or the whole interest which the grantor had power to convey in the land, unless a contrary intention appears in the conveyance⁸.

Where the forename or surname of a corporation sole appears in a grant of lands, it is a question of construction whether the grant is to the corporation to go in succession, or to the individual occupant described by his official title. The presence of the word 'successors' in a grant made before 1 January 1926⁹ will be strong evidence to show that the grant is to go to the corporation as such¹⁰.

1 Co Litt 94b. For the meaning of 'corporation sole' see PARA 1111 ante.

2 See the Wills Act 1837 s 2 (repealed), which repealed all the former statutes restricting corporations from taking under such a disposition. As to the position of a corporation aggregate see PARA 1249 post. For the meaning of 'corporation aggregate' see PARA 1109 ante.

3 *Arundel's Case* (1615) Hob 64; *Fulwood's Case* (1591) 4 Co Rep 64b; 1 Roll Abr 515.

4 Co Litt 46b. See also *Howley v Knight* (1849) 14 QB 240; *Power v Banks* [1901] 2 Ch 487.

5 This appears to follow from the Law of Property Act 1925 s 180(1), which is not clear, but provides as follows. Where either after or before 1 January 1926 any property or any interest therein is or has been vested in a corporation sole (including the Crown), the same, unless and until otherwise disposed of by the corporation, passes and devolves to and vests in and is deemed always to have passed and devolved to or vested in the successors from time to time of such corporation: s 180(1). If strictly construed this provision would not appear to have any effect, in as much as personal property could not vest in a corporation sole (see the text and note 3 supra) and realty so vested always devolved to the successor. Cf the Administration of Estates Act 1925 s 3(5), which assumes that a corporation sole can hold personal property as such: see EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARA 366. On the death of a corporator sole his interest in the corporation's real and personal estate is deemed to be an interest ceasing on his death and devolves to his successor (s 3(5)); and this applies on the demise of the Crown as respects all property, real and personal, vested in the Crown as a corporation sole (s 3(5)). See *Hayward v Chaloner* [1968] 1 QB 107, sub nom *Hayward v Challoner* [1967] 3 All ER 122, CA (oral tenancy of land in favour of incumbent of benefice; rent not paid; possessory title gained by successor in benefice). As to succession to personal property see PERSONAL PROPERTY vol 35 (Reissue) PARA 1232.

6 Law of Property Act 1925 s 180(2). Section 180(2) alters the former law under which a grant to a corporation sole taking effect at a time when the office was vacant was void: see *Holden v Smallbrooke* (1667) Vaugh 187 at 199.

7 *Robinson v Lewis* (1480) YB 20 Edw 4, fo 2, pl 7 per Choke CJ; Co Litt 8b, 94b; cf *Buckland v Fowcher* (1486) cited in 10 Co Rep 27a.

8 Law of Property Act 1925 s 60(2), (4).

9 Ie the date on which the Law of Property Act 1925 came into force: see the text to note 8 supra.

10 Co Litt 9b.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(3) OWNERSHIP OF PROPERTY/(ii) Ownership of Land/1249. Ownership of land by corporation aggregate.

1249. Ownership of land by corporation aggregate.

A grant by deed to a corporation aggregate without the use of the word 'successors' passes the fee simple, because in law such a corporation never dies¹.

A corporation aggregate is as much entitled to take property under testamentary disposition as an ordinary person, for the Wills Act 1837² repealed all the former statutes restricting corporations from taking under such a disposition, and itself imposed no restriction of any kind.

If a corporation is authorised by statute to take land compulsorily for a definite purpose, it cannot take that land for any other purpose³; but with that qualification it may take the land subject to the same rights and incidents as against strangers as though it were a natural person⁴.

Where there is or has been a vacancy in the office of the head of a corporation aggregate (in any case in which the vacancy affects the status or powers of the corporation⁵) at the time when, if there had been no vacancy, any interest in or charge on property would have been acquired by the corporation, the interest, notwithstanding the vacancy, vests and is deemed to have vested in the corporation, but without prejudice to the right of the corporation after the appointment of its head officer to disclaim that interest or charge⁶.

1 Co Litt 9b. Such words as 'successors or assigns' are meaningless as words of limitation in a conveyance to a corporation aggregate: *Re Woking UDC (Basingstoke Canal) Act 1911* [1914] 1 Ch 300 at 307, CA, per Cozens-Hardy MR. For the meaning of 'corporation aggregate' see PARA 1109 ante.

2 See the Wills Act 1837 s 2 (repealed).

3 *Galloway v London Corp'n* (1866) LR 1 HL 34 at 43; *Lord Carington v Wycombe Rly Co* (1868) 3 Ch App 377 at 381; *Bostock v North Staffordshire Rly Co* (1855) 4 E & B 798 at 829. See further COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 526.

4 *Swindon Waterworks Co v Wilts and Berks Canal Navigation Co* (1875) LR 7 HL 697; *Bonner v Great Western Rly Co* (1883) 24 ChD 1 at 9, CA, per Baggallay LJ.

5 See PARAS 1206 ante, 1255 post.

6 Law of Property Act 1925 s 180(2). This provision alters the common law rule: see Co Litt 264a. As to the appointment of officers see PARA 1154 et seq ante.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(3) OWNERSHIP OF PROPERTY/(ii) Ownership of Land/1250. Prescription.

1250. Prescription.

A corporation may acquire land by prescription and by deed and avail itself of both titles¹. It may prescribe to have common of pasture in gross². A member may prescribe in right of the corporation³.

1 *Blackston v Martin* (1625) Lat 112 at 113n. As to prescription where the corporation has changed its name see PARA 1119 ante. See also *Hayward v Chaloner* [1968] 1 QB 107, sub nom *Hayward v Challoner* [1967] 3 All ER 122, CA (prescription by a corporation sole). For the meaning of 'corporation sole' see PARA 1111 ante.

2 *Mellor v Spateman* (1669) 1 Saund 339, 343; and see COMMONS vol 13 (2009) PARA 446.

3 *Hinks v Clerk* (1679) 2 Lev 252.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(3) OWNERSHIP OF PROPERTY/(ii) Ownership of Land/1251. Corporation as lord of manor.

1251. Corporation as lord of manor.

A corporation sole or aggregate¹ may hold the lordship of a manor² in his or its corporate capacity, and in that capacity could formerly make grants according to the custom of the manor so as to bind successors³.

1 For the meaning of 'corporation sole' see PARA 1111 ante; and for the meaning of 'corporation aggregate' see PARA 1109 ante.

2 See the Copyhold Act 1894 s 94 (repealed). As to rights preserved to the lord of a manor on the enfranchisement of copyholds and the extinction of manorial incidents see CUSTOM AND USAGE.

3 *Brown's Case* (1581) 4 Co Rep 21a at 21b.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(3) OWNERSHIP OF PROPERTY/(ii) Ownership of Land/1252. Frankalmoign.

1252. Frankalmoign.

Religious corporations may, it would seem¹, continue to hold lands by the tenure known as frankalmoign, in libera eleemosyna, or free alms, whereby they hold of the donor to them and their successors for ever. This tenure is spiritual, and not feudal, and the services by which it is held are uncertain, except that fealty is never one of them².

1 Tenure by frankalmoign (or frankalmoin) was expressly preserved by the Tenures Abolition Act 1660 s 7. The words in s 7 relating to frankalmoign were repealed by the Administration of Estates Act 1925 s 56, Sch 2 Pt I only so far as they applied to deaths occurring after 31 December 1925. The Tenures Abolition Act 1660 s 7 was wholly repealed by the Statute Law (Repeals) Act 1969 s 1, Schedule Pt III. It seems, however, that the saving in the Tenures Abolition Act 1660 s 7 was not in any case needed in relation to frankalmoign, because the substantive provisions of that Act did not extend to frankalmoign. Since the enactment of 18 Edw 1 (*Quia Emptores*) (1289), no new tenure in frankalmoign could be created except by the Crown: see Co Litt 98a. As to the tenure of frankalmoign see further Littleton's Tenures s 133 et seq; 2 Bl Com (14th Edn) 100; 1 Pollock and Maitland's History of English Law (2nd Edn) 240 et seq; 3 Holdsworth's History of English Law 34-37; Cheshire and Burn's Modern Law of Real Property (15th Edn, 1994) p 19. As to church property generally see ECCLESIASTICAL LAW.

2 2 Bl Com 101, 102. As to fealty see REAL PROPERTY vol 39(2) (Reissue) PARAS 5, 10.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(3) OWNERSHIP OF PROPERTY/(ii) Ownership of Land/1253. Trusts.

1253. Trusts.

A corporation may hold lands in trust¹. Land may be vested in the Public Trustee (a corporation sole) except where the trust is for religious or charitable purposes exclusively².

1 *A-G v Cashel Corpn* (1843) 3 Dr & War 294; *A-G v Drapers' Co* (1843) 6 Beav 382; and see PARAS 1144 ante, 1304 post. As to the creation of charitable trusts see CHARITIES vol 8 (2010) PARA 68 et seq; and as to trust corporations see TRUSTS vol 48 (2007 Reissue) PARA 798 et seq.

2 See the Public Trustee Act 1906 s 2(5); and TRUSTS vol 48 (2007 Reissue) PARA 767. See also CHARITIES vol 8 (2010) PARA 254 et seq. The offices of the Public Trustee and the Official Solicitor were merged on 1 April 2001, but the Public Trustee and the Official Solicitor continue to have separate functions, even though one person

may be appointed to hold both positions. As to the Public Trustee see TRUSTS vol 48 (2007 Reissue) PARA 766 et seq.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(3) OWNERSHIP OF PROPERTY/(ii) Ownership of Land/1254. Seisin.

1254. Seisin.

Where a corporation is seised of land, the seisin¹ is in the corporation itself and not in the person or persons or some of them of whom the corporation is composed or constituted². The members of the corporation have individually no seisin, legal or equitable, nor any freehold interest in the land, whatever may be their rights or interests in the net rents and profits of the land³. Where the corporation has a head, the head has no seisin in the lands of the corporation⁴.

1 An owner in possession of a freehold estate is said to be 'seised' of the land, and his possession is called 'seisin': Co Litt 17a. As to seisin see further REAL PROPERTY vol 39(2) (Reissue) PARA 167.

2 *Baxter v Brown* (1845) 7 Man & G 198 at 210 per Maule J. See also *Rennell v Bishop of Lincoln* (1827) 7 B & C 113 at 166 per Littledale J; on appeal sub nom *Mirehouse v Rennell* (1833) 1 Cl & Fin 527, HL.

3 *Acland v Lewis* (1860) 9 CBNS 32. Where the master of a college and his fellows are seised of corporate lands, they are seised solely in right of the college: *Fulmerston v Steward* (1554) 1 Plowd 101. Where lands were vested in a corporation for the benefit of its individual members, but not of itself as a corporate body, the corporation was held to be rateable in respect thereof: *R v York Corpn* (1837) 6 Ad & El 419; and see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 30.

4 *Philips v Bury* (1694) as reported in 2 Term Rep 346 at 355 per Holt CJ.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(3) OWNERSHIP OF PROPERTY/(iii) Alienation of Property/1255. General right of alienation.

(iii) Alienation of Property

1255. General right of alienation.

At common law, corporations, of whatever nature, have a general right to alienate their lands held in fee; and this inherent power of alienation is independent of anything in the nature of a trust imposed on the corporation in favour of either its individual members or the purposes for which it was constituted¹. A corporation which is a charity, or which holds property on charitable trusts, cannot sell, lease, mortgage or otherwise dispose of land without the consent of the Charity Commissioners; but these rules are subject to important exceptions as a result of which many transactions may take place without such consent². A corporation aggregate³ with a head cannot, however, make a grant while the headship is vacant, for the functions of the corporation are suspended pending the appointment of a new head⁴; and a corporation which holds land for the purposes of a special Act cannot alienate land which it requires for the purposes of the Act, even for valuable consideration⁵. Alienation is usually effected by deed under the corporate seal⁶. A clause in a charter restraining alienation except in a certain form is not binding in law⁷.

A statutory corporation has only such powers of alienation as are granted or authorised by statute or are necessarily and properly required for carrying into effect the purposes of its

incorporation or may be fairly regarded as incidental to or consequential on those things which the statute has authorised⁸.

Since 31 December 1925 a corporation may convey to or vest land in itself⁹.

1 *Colchester Corp v Lowten* (1813) 1 Ves & B 226; and see *Sutton's Hospital Case* (1612) 10 Co Rep 1a, 23a at 30b, Ex Ch; *Smith v Barrett and Clifford* (1663) 1 Sid 161. Many corporations, such as ecclesiastical corporations, certain colleges etc, which do not come within the scope of this title, are under special statutory control with regard to their powers of alienation: see eg ECCLESIASTICAL LAW vol 14 paras 1110-1111; EDUCATION vol 15(2) (2006 Reissue) PARA 1379.

2 See the Charities Act 1993 ss 36, 38; and CHARITIES vol 8 (2010) PARAS 395, 398. As to the Charity Commissioners see CHARITIES vol 8 (2010) PARA 538 et seq.

3 For the meaning of 'corporation aggregate' see PARA 1109 ante.

4 Grant, Law of Corporations 146. As to the appointment of officers see PARA 1154 ante.

5 *Mulliner v Midland Rly Co* (1879) 11 ChD 611; and see the cases cited in para 1231 note 16 ante.

6 *Winne v Bampton* (1747) 3 Atk 473 at 475. As to execution of deeds and documents see PARA 1261 et seq post. See also PARAS 1256, 1272-1273 post. As to the seal see PARA 1122 et seq ante.

7 *Sutton's Hospital Case* (1612) 10 Co Rep 1a, 23a, Ex Ch.

8 See PARA 1231 ante. For example, the grant by a local authority of an option to purchase land was not within the power to sell land conferred by the Local Government Act 1933 s 165 and was ultra vires: *Trustees of the Chippenham Golf Club v North Wiltshire District Council* (1991) 64 P & CR 527, CA. Wider powers are now conferred by the Local Government Act 1972 s 123 (as amended): see LOCAL GOVERNMENT vol 69 (2009) PARA 515.

9 See the Law of Property Act 1925 s 72(3) (by which a person may convey land to or vest land in himself: see REAL PROPERTY vol 39(2) (Reissue) PARA 244); and the Interpretation Act 1978 ss 5, 22(1), 23(1), Sch 1, Sch 2 para 4(1)(a) (by which 'person' includes a corporation: see PARA 1225 ante). In the Law of Property Act 1925, unless the context otherwise requires, 'convey' includes mortgage, lease and other forms of assurance: s 205(1)(ii). It has, however, been held that a person cannot under s 72(3) grant a lease to himself: *Rye v Rye* [1962] AC 496, [1962] 1 All ER 146, HL. At common law a corporation sole could not make a lease to himself in either his corporate or individual capacity, nor could one of two or more constituent parts of a corporation aggregate lease lands belonging to the corporation to another of its integral parts as distinguished from a mere corporator: *Salter v Grosvenor* (1724) 8 Mod Rep 303 at 304. Thus a dean and chapter could not make a grant to the dean, but they could make grants to one of the chapter (*R v Rogers* (1702) 2 Ld Raym 777 at 778), and in the latter case the subsequent accession of the grantee to the headship of the corporation did not avoid the lease (Vin Abr, Merger, A2, pl 3). For the meaning of 'corporation sole' see PARA 1111 ante; and for the meaning of 'corporation aggregate' see PARA 1109 ante.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(3) OWNERSHIP OF PROPERTY/(iii) Alienation of Property/1256. Leases.

1256. Leases.

A statutory corporation has such power of granting or accepting leases as is expressly conferred on it by its constitution¹ or is implied from the nature of its objects, whereas a non-statutory corporation has a right at common law, subject to any statutory restriction imposed by its constitution or by statute, to take or grant leases of land².

If a lease is granted by a corporation sole of lands belonging to him in his corporate capacity, the benefit of the covenants in the lease will pass to his successors in office, but they will not be bound by any other covenants unless they are covenants usually inserted in leases of the corporate lands³. A lease granted by a corporation sole, though void against his successor, may be good against himself⁴.

If by its constitution a corporation may not grant leases of its lands for more than 21 years, a covenant for renewal at the determination of that term will be bad⁵.

1 In general, where power to lease is given by statute, the requirements of the statute must be strictly complied with (*Kent Coast Rly Co v London, Chatham and Dover Rly Co* (1868) 3 Ch App 656); but power to sell or exchange land given by a private Act may authorise the grant of a building lease with an option of purchase (*Re Female Orphan Asylum* (1867) 17 LT 59). Cf *Trustees of the Chippenham Golf Club v North Wiltshire District Council* (1991) 64 P & CR 527, CA.

2 See PARAS 1223, 1255 ante. As to leases by particular corporations see ECCLESIASTICAL LAW vol 14 para 1153 et seq; LOCAL GOVERNMENT vol 69 (2009) PARA 515.

3 Com Dig, Covenant, C3. For the meaning of 'corporation sole' see PARA 1111 ante.

4 Co Litt 45a note 4.

5 *Watson v Master etc of Hemsworth Hospital* (1807) 14 Ves 324 at 333. Where, however, a corporation had covenanted to renew leases for ever, renewal was decreed by the court notwithstanding that during the last 60 years the rent had been applied for a charitable purpose: *Gozna v Grantham Corpn* (1827) 3 Russ 261. Perpetually renewable leaseholds were converted into terms of 2,000 years by the Law of Property Act 1922 s 145, Sch 15 (as amended): see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 541.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(3) OWNERSHIP OF PROPERTY/(iii) Alienation of Property/1257. Charges.

1257. Charges.

Where a creditor of a statutory corporation may take property belonging to the corporation in execution of his debt, the corporation may, by implication, execute to that creditor a valid charge on that property in favour of the creditor as security for the debt. Hence, such a corporation may charge its superfluous lands, although it has no express power to do so¹.

1 *Stagg v Upper Medway Navigation Co* [1903] 1 Ch 169, CA; *Reeve v Upper Medway Navigation Co* (1905) 21 TLR 400.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(3) OWNERSHIP OF PROPERTY/(iii) Alienation of Property/1258. Easements.

1258. Easements.

So long as it is consistent with the purposes for which a corporation is authorised to hold land, it may grant easements over that land in the same way as an ordinary individual¹.

1 *Re Gonty and Manchester, Sheffield and Lincolnshire Rly Co* [1896] 2 QB 439, CA; *Mulliner v Midland Rly Co* (1879) 11 ChD 611; and see *South Eastern Rly Co v Associated Portland Cement Manufacturers (1900) Ltd* [1910] 1 Ch 12, CA. As to the grant of easements generally see EASEMENTS AND PROFITS A PRENDRE.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(3) OWNERSHIP OF PROPERTY/(iii) Alienation of Property/1259. Income payable to corporations sole.

1259. Income payable to corporations sole.

Income from investments in court representing purchase money of lands belonging to a corporation sole in right of his office may be ordered to be paid to the holder or incumbent for the time being¹.

¹ *Re East Lincolnshire Railway Co's Acts, ex p Archbishop of Canterbury* (1848) 2 De G & Sm 365. For the meaning of 'corporation sole' see PARA 1111 ante.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(3) OWNERSHIP OF PROPERTY/(iii) Alienation of Property/1260. Power to hold personalty; franchise.

1260. Power to hold personalty; franchise.

Corporations aggregate may take and hold personal property of every kind, and to any amount¹; and it would appear that the same may now be said of corporations sole, provided that it is clear that the property is intended to be held by the corporator sole in his corporate, and not his personal, capacity².

A franchise may be vested in a corporation for the benefit of its members³.

¹ *Fulwood's Case* (1591) 4 Co Rep 64b; Com Dig, Franchise, F15; 1 Bl Com 465. The Law of Property Act 1925 s 74(3), (4) (as amended) (see PARA 1267 post) and s 180(2) (see PARA 1249 ante) apply to personal property: see s 205(1)(xx). For the meaning of 'corporation aggregate' see PARA 1109 ante.

² See *ibid* s 180(1); and PARA 1248 note 5 ante. For the meaning of 'corporation sole' see PARA 1111 ante.

³ *Winton Corpn v Wilks* (1705) 2 Ld Raym 1129 at 1134. As to franchises generally see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 879 et seq.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(4) EXECUTION OF DEEDS AND DOCUMENTS/1261. Execution of documents by affixing the seal.

(4) EXECUTION OF DEEDS AND DOCUMENTS

1261. Execution of documents by affixing the seal.

Any document may be executed by a corporation by affixing its common seal, where it has one¹; and in the absence of statutory² or constitutional provisions³ permitting other modes of execution, execution must be under the seal of the corporation⁴. In the case of trading corporations, when no particular formalities are prescribed by the constitution as to the mode in which, or the persons in whose presence, the seal must be affixed to a document, the persons who as a matter of practice manage its affairs must, of necessity, be able to use the seal for those acts which they are authorised to perform⁵. The court will not, on an application

for judicial review, grant a mandatory order directing a company to remove its seal from a document on the allegation that it was affixed without authority and contrary to statute⁶.

Where by the constitution of a corporation⁷ any special mode of execution of its deeds is prescribed, or any particular formality is required to be observed in affixing the corporate seal⁸, every deed of the corporation, in order to be completely binding, must be executed in the manner or with every formality so prescribed⁹. Any deed of a non-statutory corporation¹⁰ must, in the absence of any special and legally binding regulations to the contrary, be sealed at a duly constituted meeting of the corporation and in pursuance of a resolution of a majority of its members then present¹¹. The corporation may, however, by a deed duly sealed in this way, appoint and empower an attorney to execute any deed on its behalf¹².

In favour of a person dealing¹³ with a company regulated by the Companies Act 1985¹⁴ in good faith¹⁵, the power of the board of directors to bind the company, or authorise others to do so, is deemed to be free of any limitation under the company's constitution¹⁶. A party to a transaction with such a company is not bound to inquire as to whether it is permitted by the company's memorandum or as to any limitations on the powers of the board of directors to bind the company or authorise others to do so¹⁷. The effect of these provisions is that the directors' powers are deemed to be free from limitations in the articles on matters such as the manner of affixing the company seal¹⁸.

An instrument is not to be taken to make it clear on its face that it is intended to be a deed merely because it is executed under seal¹⁹.

A document signed by a director and the secretary of a company regulated by the Companies Act 1985²⁰, or by two directors of such a company, and expressed, in whatever form of words, to be executed by the company has the same effect as if executed under the common seal of the company²¹.

1 As to the requirement to have a corporate seal see PARA 1122 ante.

2 See the Corporate Bodies' Contracts Act 1960 s 1 (contracts of any body corporate need not be under seal). However, this does not apply to any company formed and registered under the Companies Act 1985 or to an existing company as defined in that Act or to a limited liability partnership: Corporate Bodies' Contracts Act 1960 s 2 (amended by the Companies Consolidation (Consequential Provisions) Act 1985 s 30, Sch 2; and the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 9(1), Sch 5 para 3); and see PARA 1272 post. As to companies regulated by the Companies Act 1985 see s 36A (as added); and PARA 1263 post. As to the application of s 36A (as added) to unregistered companies see s 718, Sch 22. See also the Law of Property Act 1925 s 74(1), (6) (s 74(1) as substituted); and PARAS 1264, 1267 post.

3 See *Xenos v Wickham* (1866) LR 2 HL 296 (deed of settlement allowed for execution by signature of directors).

4 See PARAS 1115, 1122-1123 ante.

5 *Re Barned's Banking Co, ex p Contract Corp'n* (1867) 3 Ch App 105 at 116.

6 *Ex p Nash* (1850) 15 QB 92 (where the document was a register of shareholders in a railway company).

7 Eg by the articles of association: see COMPANIES vol 14 (2009) PARA 288. See also DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) para 41.

8 See eg FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 1883; COMPANIES vol 14 (2009) PARA 287.

9 *Clarke v Imperial Gas Light and Coke Co* (1832) 4 B & Ad 315 at 324-326; *Ernest v Nicholls* (1857) 6 HL Cas 401 at 418-422 per Lord Wensleydale; *D'Arcy v Tamar, Kit Hill and Callington Rly Co* (1866) LR 2 Exch 158. But see PARA 1262 post.

10 See PARA 1223 et seq ante.

11 *Bac Abr, Corporations*, E 3, 7, 8; *Mayor etc & Co of Merchants of the Staple of England v Governor & Co of Bank of England* (1887) 21 QBD 160 at 165-166, CA.

12 *Kidderminster Corpn v Hardwick* (1873) LR 9 Exch 13 at 18, 24; *Oxford Corpn v Crow* [1893] 3 Ch 535 at 539; and see PARAS 1267, 1273 post. See also DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) para 13.

13 For these purposes, a person 'deals with' a company if he is a party to any transaction or other act to which the company is a party: Companies Act 1985 s 35A(2)(a) (s 35A added by the Companies Act 1989 s 108(1)).

14 For the meaning of 'company' in the Companies Act 1985 see s 735(1)(a).

15 For these purposes, a person is presumed to have acted in good faith unless the contrary is proved; and a person is not regarded as acting in bad faith by reason only of his knowing that an act is beyond the powers of the directors under the company's constitution: *ibid* s 35A(2)(b), (c) (as added: see note 13 *supra*). For the meaning of 'good faith' see *International Sales and Agencies Ltd v Marcus* [1982] 3 All ER 551 at 559; *Barclays Bank Ltd v TOSG Trust Fund Ltd* [1984] BCLC 1 at 17; *TCB Ltd v Gray* [1986] Ch 621, [1986] 1 All ER 587 (affd on other grounds [1987] Ch 458n, [1988] 1 All ER 108, CA).

16 Companies Act 1985 s 35A(1) (as added: see note 13 *supra*). The operation of s 35A (as added) is restricted by the Charities Act 1993 s 65(1) in relation to companies which are charities: see the Companies Act 1985 s 35A(6) (as added and amended). There is a similar restriction in the case of open-ended investment companies: see the Open-Ended Investment Companies Regulations 2001, SI 2001/1228; and FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 622 et seq. As to the application of the Companies Act 1985 s 35A (as added) to unregistered companies see s 718, Sch 22.

As to the right of a member of the company to restrain the doing of an act which is beyond the powers of the directors see s 35A(4) (as added).

17 *Ibid* s 35B (added by the Companies Act 1989 s 108(1)). As to the application of the Companies Act 1985 s 35B (as added) to unregistered companies see s 718, Sch 22.

18 *TCB Ltd v Gray* [1986] Ch 621, [1986] 1 All ER 587; affd on other grounds [1987] Ch 458n, [1988] 1 All ER 108, CA.

19 See the Law of Property (Miscellaneous Provisions) Act 1989 s 1(2A) (added by the Regulatory Reform (Execution of Deeds and Documents) Order 2005, SI 2005/1906, art 8); and DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) para 8. As to the requirement to have a corporate seal see PARA 1122 ante. As to the presumption as to due sealing see PARA 1262 post.

20 See note 14 *supra*.

21 Companies Act 1985 s 36A(1), (4) (s 36A added by the Companies Act 1989 s 130(2)). As to the application of the Companies Act 1985 s 36A (as added and amended) to unregistered companies see s 718, Sch 22. See also PARA 1263 post.

UPDATE

1261 Execution of documents by affixing the seal

TEXT AND NOTES 2, 17, 20, 21--Companies Act 1985 ss 36A, 718 replaced by Companies Act 2006 ss 44 (see COMPANIES vol 14 (2009) PARA 288), 1043 (see COMPANIES vol 15 (2009) PARA 1666). s 985 Act Sch 22 repealed: Companies Act 2006 Sch 16.

NOTE 2--Corporate Bodies' Contracts Act 1960 s 2 substituted: SI 2009/1941.

NOTE 14--Companies Act 1985 s 735(1)(a) replaced by Companies Act 2006 s 1(1): see COMPANIES vol 14 (2009) PARA 24.

NOTES 16, 17--Companies Act 1985 ss 35A, 35B replaced by Companies Act 2006 s 40: see COMPANIES vol 14 (2009) PARA 263.

NOTE 16--Charities Act 1993 s 65 omitted: SI 2009/1941.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(4) EXECUTION OF DEEDS AND DOCUMENTS/1262. Presumption as to due sealing.

1262. Presumption as to due sealing.

Where the corporate seal is affixed by persons having the legal custody of it to a deed which the corporation has power to execute, there is, apart from statute, a presumption that the seal was set with due regard to the fulfilment of all preliminary proceedings required by the constitution of the corporation¹ and, if no special formalities are prescribed by Act of Parliament or the constitution, with sufficient authority². Subject to certain statutory provisions³ applying to deeds⁴ executed after 31 December 1925, it is open to the corporation to show that the seal was set without the authority of the corporation⁵, or without the requisite formalities having been gone through⁶. A corporation seeking to set aside its own formal act, on the ground of irregularity in the proceedings preliminary to the setting of the corporate seal, may do so only on the clearest evidence⁷.

In proving an instrument to which a corporate seal is affixed, it is usually unnecessary to produce a witness who saw it affixed⁸.

Where it appears on the face of a deed executed under the common seal of a corporation that the transaction thereby evidenced is within the powers of the corporation, and that all the particular formalities, if any, prescribed by the constitution of the corporation for the execution of its deeds have been duly observed, but owing solely to some irregularity which is a matter of the internal management of the corporation the deed is not indefeasibly binding, the corporation will be estopped from averring the defect of internal management as a reason for avoiding the deed as against any person claiming under it as a purchaser for value in good faith and without notice of the defect⁹.

A corporation is not estopped from averring that its common seal has been affixed to a deed fraudulently or in such circumstances as to amount to forgery, even though the deed is sealed with the true corporate seal and the same was affixed (without authority) by the person entrusted with its custody¹⁰; but the corporation may be estopped if it has acted in such a manner as to warrant the act of its officer or agent to be genuine¹¹.

1 *Clarke v Imperial Gas Light and Coke Co* (1832) 1 Nev & MKB 206. As to the requirement to have a corporate seal see PARA 1122 ante.

2 *Re Barned's Banking Co, ex p Contract Corp'n* (1867) 3 Ch App 105 at 116 per Lord Cairns LJ.

3 See the Law of Property Act 1925 s 74 (as amended), s 74A (as added), the Companies Act 1985 s 36A (as added and amended), s 36AA (as added); and PARAS 1264-1265 post.

4 The statutory provisions referred to in note 3 supra do not apply to a share certificate under seal, which is not a deed for this purpose: see *South London Greyhound Racecourses Ltd v Wake* [1931] 1 Ch 496 at 503; and COMPANIES vol 14 (2009) PARA 381. The statutory provisions do apply to any instrument executed after 15 September 2005: see the Law of Property Act 1925 s 74 (as amended); and PARA 1264 post.

5 *Hill v Manchester and Salford Water Works Co* (1833) 2 Nev & MKB 573. The mere fact that the custody of the corporate seal is confided to the clerk to the corporation is not such negligence on the part of the corporation as to disentitle it to recover, in a claim against a third party, stock belonging to it which had been transferred by the clerk under the corporate seal without the authority of the corporation: *Mayor etc & Co of Merchants of the Staple of England v Governor & Co of Bank of England* (1887) 21 QBD 160, CA. As to contracts see PARA 1232 ante.

6 *D'Arcy v Tamar, Kit Hill and Callington Rly Co* (1866) LR 2 Exch 158. The formalities referred to in the text are those of which members of the public are deemed to have notice, not mere private regulations created or destroyed at will by the corporation of its own accord: *County of Gloucester Bank v Rudry Merthyr Steam and House Coal Colliery Co* [1895] 1 Ch 629, CA.

7 *Clarke v Imperial Gas Light and Coke Co* (1832) 1 Nev & MKB 206.

8 See *Moises v Thornton* (1799) 8 Term Rep 303; *Doe d Governor & Co of Bank of England v Chambers* (1836) 4 Ad & El 410; and CIVIL PROCEDURE vol 11 (2009) PARA 865. However, in relation to the execution of instruments by corporations aggregate under the Law of Property Act 1925 s 74 (as amended) see PARA 1264 post.

9 *Clarke v Imperial Gas Light and Coke Co* (1832) 4 B & Ad 315; *Royal British Bank v Turquand* (1856) 6 E & B 327 at 332, Ex Ch; *Agar v Official Manager of Athenaeum Life Assurance Society* (1858) 3 CBNS 725; *Re Athenaeum Life Assurance Society, ex p Eagle Insurance Co* (1858) 4 K & J 549 at 561; *Mahony v East Holyford Mining Co* (1875) LR 7 HL 869 at 893-894; *County of Gloucester Bank v Rudry Merthyr Steam and House Coal Colliery Co* [1895] 1 Ch 629, CA; *Re Bank of Syria, Owen and Ashworth's Claim* [1900] 2 Ch 272 at 278 (affd [1901] 1 Ch 115 at 121, CA); *Duck v Tower Galvanizing Co Ltd* [1901] 2 KB 314. See also PARA 1232 ante; and COMPANIES vol 14 (2009) PARA 288. A statement in a document that it has been signed, sealed and delivered by a party is a representation which may estop that party from denying that it has been sealed: *TCB Ltd v Gray* [1986] Ch 621, [1986] 1 All ER 587; affd on other grounds [1987] Ch 458n, [1988] 1 All ER 108, CA. As to estoppel generally see ESTOPPEL.

10 *Ruben v Great Fingall Consolidated* [1906] AC 439, HL; *Bank of Ireland v Evans' Charities Trustees* (1855) 5 HL Cas 389; *Mayor etc & Co of Merchants of the Staple of England v Governor & Co of Bank of England* (1887) 21 QBD 160, CA; *Kreditbank Cassel GmbH v Schenkers* [1927] 1 KB 826, CA; *South London Greyhound Racecourses Ltd v Wake* [1931] 1 Ch 496; and see COMPANIES vol 14 (2009) PARAS 268, 287.

11 See *Shaw v Port Philip Colonial Gold Mining Co Ltd* (1884) 13 QBD 103; criticised in *Ruben v Great Fingall Consolidated* [1906] AC 439, HL. As to the liability of a corporation for the torts of its agents or employees see PARA 1275 et seq post.

UPDATE

1262 Presumption as to due sealing

NOTE 3--Companies Act 1985 ss 36A, 36AA replaced by Companies Act 2006 ss 44, 45(1), 46; see COMPANIES vol 14 (2009) PARA 288.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(4) EXECUTION OF DEEDS AND DOCUMENTS/1263. Execution of documents by signature.

1263. Execution of documents by signature.

Under the law of England and Wales a document is executed by a company regulated by the Companies Act 1985¹ by the affixing of its common seal²; but such a company need not now have a common seal and the provisions described below apply whether or not the company has a common seal³.

A document signed by a director and the secretary of such a company, or by two directors of such a company, and expressed, in whatever form of words, to be executed by the company has the same effect as if executed under the common seal of the company⁴. Where a document is to be signed by a person as a director or the secretary of more than one company, it is not to be taken to be duly signed by that person for these purposes unless the person signs it separately in each capacity⁵. These provisions apply, as regards documents executed after 15 September 2005, in the case of a document which is (or purports to be) executed by a company in the name or on behalf of another person whether or not that person is also a company⁶. For these purposes, a document is (or purports to be) signed, in the case of a director or the secretary of a company which is not an individual, if it is (or purports to be) signed by an individual authorised by the director or secretary to sign on its behalf⁷.

Similar provisions apply to companies incorporated outside Great Britain⁸, incorporated friendly societies⁹ and open-ended investment companies¹⁰.

- 1 For the meaning of 'company' in the Companies Act 1985 see s 735(1)(a).
- 2 Ibid s 36A(1), (2) (s 36A added by the Companies Act 1989 s 130(2)).
- 3 Companies Act 1985 s 36A(1), (3) (as added: see note 2 supra). Section s 36A(4)-(8) (as added) (see the text and notes 4-8 infra) applies whether the company has a common seal or not: s 36A(3) (as so added). As to the application of s 36A (as added) to unregistered companies see s 718, Sch 22. As to the requirement to have a corporate seal see PARA 1122 ante.
- 4 Ibid s 36A(1), (4) (as added: see note 2 supra). It seems that s 36A(4) (as added) applies, even if it is inconsistent with the company's articles: see *Bishopsgate Investment Management Ltd v Maxwell (No 2)* [1993] BCLC 814 at 832-833; approved on appeal without comment on this point [1994] 1 All ER 261, [1993] BCLC 1282, CA.
- 5 Companies Act 1985 s 36A(4A) (s 36A as added (see note 2 supra); and s 36A(4A) added by the Regulatory Reform (Execution of Deeds and Documents) Order 2005, SI 2005/1906, art 10(1), Sch 1 paras 9, 10). This only applies to instruments executed after 15 September 2005: see the Regulatory Reform (Execution of Deeds and Documents) Order 2005, SI 2005/1906, art 1(1).
- 6 Companies Act 1985 s 36A(7) (s 36A as added (see note 2 supra); and s 36A(7) added by the Regulatory Reform (Execution of Deeds and Documents) Order 2005, SI 2005/1906, art 7(2)).
- 7 Companies Act 1985 s 36A(8) (s 36A as added (see note 2 supra); and s 36A(8) added by the Regulatory Reform (Execution of Deeds and Documents) Order 2005, SI 2005/1906, Sch 1 paras 9, 11).
- 8 See the Companies Act 1985 s 36A(4) (s 36A as added (see note 2 supra); and modified by the Foreign Companies (Execution of Documents) Regulations 1994, SI 1994/950, regs 2, 5); and PARA 1268 post.
- 9 See the Friendly Societies Act 1992 s 7(6), Sch 6 para 2; and FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 2118.
- 10 See the Open-Ended Investment Companies Regulations 2001, SI 2001/1228, reg 57(4) (signature of at least one director); and FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 647.

UPDATE

1263-1265 Execution of documents by signature ... Due execution of document as a deed

Companies Act 1985 ss 36A, 718 replaced by Companies Act 2006 s 44: see COMPANIES vol 14 (2009) PARA 288. Companies Act 1985 Sch 22 repealed: Companies Act 2006 Sch 16.

1263 Execution of documents by signature

NOTE 1--Companies Act 1985 see s 735(1)(a) replaced by Companies Act 2006 s 1(1): see COMPANIES vol 14 (2009) PARA 24.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(4) EXECUTION OF DEEDS AND DOCUMENTS/1264. Presumption of due execution of document.

1264. Presumption of due execution of document.

In favour of a purchaser in good faith for valuable consideration¹, a deed executed between 31 December 1925 and 15 September 2005 is deemed to have been duly executed by a corporation aggregate² if the seal is affixed to it in the presence of and attested by its clerk, secretary or other permanent officer or his deputy, and a member of the board of directors, council or other governing body of the corporation; and where a seal purporting to be the seal of a corporation has been affixed to a deed, attested by persons purporting to be persons holding such offices, the deed is deemed to have been executed in accordance with these requirements and to have effect accordingly³.

As from 15 September 2005⁴, the presumption of due execution has been extended to all instruments under seal as follows. In favour of a purchaser in good faith for valuable consideration⁵ an instrument is deemed to have been duly executed by a corporation aggregate if a seal purporting to be the corporation's seal purports to be affixed to the instrument in the presence of and attested by: (1) two members of the board of directors, council or other governing body of the corporation; or (2) one such member and the clerk, secretary or other permanent officer of the corporation or his deputy⁶. This applies in the case of an instrument purporting to have been executed by a corporation aggregate in the name or on behalf of another person whether or not that person is also a corporation aggregate⁷. A seal purports to be affixed in the presence of and attested by an officer of the corporation, in the case of an officer which is not an individual, if it is affixed in the presence of and attested by an individual authorised by the officer to attest on its behalf⁸.

In favour of a purchaser⁹, a document is deemed to have been duly executed by a company regulated by the Companies Act 1985¹⁰ if it purports to be signed by a director and the secretary of the company, or by two directors of the company¹¹. This provision applies, as regards instruments executed after 15 September 2005, in the case of a document which is (or purports to be) executed by a company in the name or on behalf of another person whether or not that person is also a company¹². A document is (or purports to be) signed, in the case of a director or the secretary of a company which is not an individual, if it is (or purports to be) signed by an individual authorised by the director or secretary to sign on its behalf¹³.

Similar provisions apply to companies incorporated outside Great Britain¹⁴, incorporated friendly societies¹⁵ and open-ended investment companies¹⁶.

1 See the Law of Property Act 1925 s 205(1)(xxi).

2 For the meaning of 'corporation aggregate' see PARA 1109 ante.

3 Law of Property Act 1925 s 74(1) (as originally enacted). Thus a purchaser need not inquire into the formalities required by the charter, articles or other instruments constituting the corporation. The provisions apply to transactions wherever effected (s 74(5)), but not to instruments other than deeds (see PARA 1262 ante). Section 74(1) is concerned only with the formalities of sealing and does not dispense with the requirement of delivery: *Bolton Metropolitan Borough Council v Torkington* [2003] EWCA Civ 1634, [2004] Ch 66, [2004] 4 All ER 238 (approving *Longman v Viscount Chelsea* (1989) 58 P & CR 189 at 199, CA, obiter per Nourse LJ; and disapproving dicta of Buckley J in *Beesly v Hallwood Estates Ltd* [1960] 2 All ER 314, [1960] 1 WLR 549, and in *D'Silva v Lister House Development Ltd* [1971] Ch 17, [1970] 1 All ER 858). As to delivery see PARA 1266 post.

4 See the Regulatory Reform (Execution of Deeds and Documents) Order 2005, SI 2005/1906, art 1.

5 See note 1 supra.

6 Law of Property Act 1925 s 74(1) (substituted by the Regulatory Reform (Execution of Deeds and Documents) Order 2005, SI 2005/1906, art 3).

7 Law of Property Act 1925 s 74(1A) (added by the Regulatory Reform (Execution of Deeds and Documents) Order 2005, SI 2005/1906, art 7(1)).

8 Law of Property Act 1925 s 74(1B) (added by the Regulatory Reform (Execution of Deeds and Documents) Order 2005, SI 2005/1906, art 10(1), Sch 1 paras 1, 2).

9 For these purposes, 'purchaser' means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who for valuable consideration acquired an interest in property: Companies Act 1985 s 36A(1), (6) (s 36A added by the Companies Act 1989 s 130(2)).

10 For the meaning of 'company' in the Companies Act 1985 see s 735(1)(a).

11 Ibid s 36A(6) (s 36A as added (see note 9 supra); and s 36A(6) amended by the Regulatory Reform (Execution of Deeds and Documents) Order 2005, SI 2005/1906, arts 5, 10(2), Sch 2). As to the application of the Companies Act 1985 s 36A (as added and amended) to unregistered companies see s 718, Sch 22.

12 Ibid s 36A(7) (s 36A as added (see note 9 supra); and s 36A(7) added by the Regulatory Reform (Execution of Deeds and Documents) Order 2005, SI 2005/1906, art 7(2)).

13 Companies Act 1985 s 36A(8) (s 36A as added (see note 9 supra); and s 36A(8) added by the Regulatory Reform (Execution of Deeds and Documents) Order 2005, SI 2005/1906, Sch 1 paras 9, 11). The Companies Act 1985 s 36A(8) (as added) does not apply in relation to any instrument executed before 15 September 2005.

14 See the Companies Act 1985 s 36A(6) (as added (see note 9 supra); and modified by the Foreign Companies (Execution of Documents) Regulations 1994, SI 1994/950, regs 2, 5); and PARA 1268 post.

15 See the Friendly Societies Act 1992 s 7(6), Sch 6 para 2(6), (7); and FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 2118.

16 See the Open-Ended Investment Companies Regulations 2001, SI 2001/1228, reg 57(6), (7) (signature of one director); and FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 647.

UPDATE

1263-1265 Execution of documents by signature ... Due execution of document as a deed

Companies Act 1985 ss 36A, 718 replaced by Companies Act 2006 s 44: see COMPANIES vol 14 (2009) PARA 288. Companies Act 1985 Sch 22 repealed: Companies Act 2006 Sch 16.

1264 Presumption of due execution of document

NOTE 10--Companies Act 1985 s 735(1)(a) replaced by Companies Act 2006 s 1(1): see COMPANIES vol 14 (2009) PARA 24.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(4) EXECUTION OF DEEDS AND DOCUMENTS/1265. Due execution of document as a deed.

1265. Due execution of document as a deed.

An instrument is not a deed unless: (1) it makes it clear on its face that it is intended to be a deed by the person making it or, as the case may be, by the parties to it (whether by describing itself as a deed or expressing itself to be executed or signed as a deed or otherwise); and (2) it is validly executed as a deed: (a) by that person or a person authorised to execute it in the name or on behalf of that person; or (b) by one or more of those parties or a person authorised to execute it in the name or on behalf of one or more of those parties¹. For these purposes, an instrument is not to be taken to make it clear on its face that it is intended to be a deed merely because it is executed under seal².

An instrument is validly executed after 15 September 2005³ by a corporation aggregate⁴ as a deed⁵ if and only if it is duly executed⁶ by the corporation⁷ and it is delivered as a deed⁸. An

instrument is presumed to be delivered for these purposes⁹ upon its being executed, unless the contrary intention is proved¹⁰. Where a deed is executed between 31 December 1925 and 15 September 2005¹¹, there is a presumption of due execution of a deed in favour of a purchaser in good faith for valuable consideration¹², but that presumption does not extend to delivery, which remains a distinct requirement¹³.

A document is validly executed after 15 September 2005¹⁴ by a company regulated by the Companies Act 1985¹⁵ as a deed¹⁶ if and only if: (i) it is duly executed by the company¹⁷; and (ii) it is delivered as a deed¹⁸. A document is presumed to be delivered for these purposes¹⁹ upon its being executed, unless the contrary intention is proved²⁰.

A document executed by a company before 15 September 2005 which makes it clear on its face that it is intended by the person or persons making it to be a deed has effect, upon delivery, as a deed; and is presumed, unless a contrary intention is proved, to be delivered upon its being so executed²¹. In favour of a purchaser²², a document is deemed to have been duly executed by a company regulated by the Companies Act 1985 if it purports to be signed by a director and the secretary of the company, or by two directors of the company; and where it makes clear on its face that it is intended by the person or persons making it to be a deed, it is deemed to have been delivered upon its being executed²³.

Similar provisions apply to companies incorporated outside Great Britain²⁴, incorporated friendly societies²⁵ and open-ended investment companies²⁶.

1 Law of Property (Miscellaneous Provisions) Act 1989 s 1(2) (amended by the Regulatory Reform (Execution of Deeds and Documents) Order 2005, SI 2005/1906, art 7(3)). The amendment made by the Regulatory Reform (Execution of Deeds and Documents) Order 2005, SI 2005/1906, does not apply in relation to an instrument executed before 15 September 2005. See also DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARA 8. The references in the Law of Property (Miscellaneous Provisions) Act 1989 s 1 (as amended) to the execution of a deed by an individual do not include execution by a corporation sole: s 1(10).

2 Ibid s 1(2A) (added by the Regulatory Reform (Execution of Deeds and Documents) Order 2005, SI 2005/1906, art 8). The amendment made by the Regulatory Reform (Execution of Deeds and Documents) Order 2005, SI 2005/1906, does not apply in relation to an instrument executed before 15 September 2005.

3 See the Regulatory Reform (Execution of Deeds and Documents) Order 2005, SI 2005/1906, art 1(1). See note 11 infra.

4 For the meaning of 'corporation aggregate' see PARA 1109 ante.

5 Ie for the purposes of the Law of Property (Miscellaneous Provisions) Act 1989 s 1(2)(b) (as substituted): see DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARA 32 et seq.

6 As to due execution see PARAS 1261, 1263 ante. As to the presumption of due execution see PARA 1264 ante.

7 Law of Property Act 1925 s 74A(1)(a) (s 74A added by the Regulatory Reform (Execution of Deeds and Documents) Order 2005, SI 2005/1906, art 4).

8 Law of Property Act 1925 s 74A(1)(b) (as added: see note 7 supra).

9 Ie for the purposes of ibid s 74A(1)(b) (as added): see the text and note 8 supra.

10 Ibid s 74A(2) (as added: see note 7 supra).

11 Ie the date on which the amendments made by the Regulatory Reform (Execution of Deeds and Documents) Order 2005, SI 2005/1906, came into force: see art 1(1), (2).

12 Law of Property Act 1925 s 74(1) (as originally enacted); and see PARA 1264 ante.

13 See PARA 1264 note 3 ante. As to the requirement of delivery see PARA 1266 post.

14 See the Regulatory Reform (Execution of Deeds and Documents) Order 2005, SI 2005/1906, art 1(1).

15 For the meaning of 'company' in the Companies Act 1985 see s 735(1)(a).

16 See note 5 *supra*.

17 See note 6 *supra*.

18 See the Companies Act 1985 s 36AA(1)(a), (b) (s 36AA added by the Regulatory Reform (Execution of Deeds and Documents) Order 2005, SI 2005/1906, art 6). This mirrors the provisions of the Law of Property Act 1925 s 74A (as added). As to the application of the Companies Act 1985 s 36AA (as added) to unregistered companies see s 718, Sch 22;.

19 *Ie* for the purposes of *ibid* s 36AA(1)(b) (as added): see head (ii) in the text.

20 *Ibid* s 36AA(2) (as added: see note 18 *supra*). This mirrors the provisions of the Law of Property Act 1925 s 74A (as added).

21 Companies Act 1985 s 36A(5) (s 36A added by the Companies Act 1989 s 130(2) with effect from 31 July 1990; and the Companies Act 1985 s 36A(5) subsequently repealed by the Regulatory Reform (Execution of Deeds and Documents) Order 2005, SI 2005/1906, art 10(2), Sch 2 with effect from 15 September 2005).

22 For these purposes, 'purchaser' means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who for valuable consideration acquired an interest in property: Companies Act 1985 s 36A(1), (6) (as added: see note 21 *supra*).

23 *Ibid* s 36A(6) (s 36A as added: see note 21 *supra*). In such a case the presumption of delivery is irrebuttable. Note that s 36A(6) is repealed in part by the Regulatory Reform (Execution of Deeds and Documents) Order 2005, SI 2005/1906, arts 5, 10(2), Sch 2 except in relation to an instrument executed before 15 September 2005.

24 See the Companies Act 1985 s 36A(6) (s 36A as added: see note 21 *supra*); applied with modifications by the Foreign Companies (Execution of Documents) Regulations 1994, SI 1994/950, regs 2, 5. See also PARA 1268 *post*.

25 See the Friendly Societies Act 1992 s 7(6), Sch 6 para 2(6), (7); and FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 2118.

26 See the Open-Ended Investment Companies Regulations 2001, SI 2001/1228, reg 57(6), (7); and FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 647.

UPDATE

1263-1265 Execution of documents by signature ... Due execution of document as a deed

Companies Act 1985 ss 36A, 718 replaced by Companies Act 2006 s 44: see COMPANIES vol 14 (2009) PARA 288. Companies Act 1985 Sch 22 repealed: Companies Act 2006 Sch 16.

1265 Due execution of document as a deed

NOTE 15--Companies Act 1985 s 735(1)(a) replaced by Companies Act 2006 s 1(1): see COMPANIES vol 14 (2009) PARA 24.

TEXT AND NOTES 18-20--Companies Act 1985 s 36AA replaced by Companies Act 2006 s 46: see COMPANIES vol 14 (2009) PARA 288.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(4) EXECUTION OF DEEDS AND DOCUMENTS/1266. Delivery of a deed.

1266. Delivery of a deed.

The deed of a corporation must be delivered as well as executed¹, and may be delivered as an escrow². The principles on which it will be determined whether writing sealed by a corporation was delivered as a deed or as a mere escrow, and the rules as to the effect of delivery as an escrow, are the same as those applicable to the case of a deed by a natural person³. At common law the sealing of a deed raises a presumption of delivery, either unconditionally or in escrow; but the presumption is rebuttable⁴. Delivery must, unless the constitution of the corporation otherwise provides, be made at a duly constituted meeting of the corporation⁵. The unconditional delivery of a deed by a corporation may be inferred, if it is proved to have been duly sealed, provided that there were no circumstances to show that it was delivered as a mere escrow⁶.

Any rule of law which required authority by one person to another to deliver an instrument as a deed on his behalf to be given by deed was abolished in 1989⁷. Where a solicitor, duly certificated notary public or licensed conveyancer (or an agent or employee of a solicitor, duly certificated notary public or licensed conveyancer) in the course of or in connection with a transaction purports to deliver an instrument as a deed on behalf of a party to the instrument, it is conclusively presumed in favour of a purchaser⁸ that he is authorised so to deliver the instrument⁹.

1 YB 9 Edw 4, 39b per Choke J; Bro Abr, Corporations and Capacities, pl 72; *Willis v Jermin* (1590) Cro Eliz 167; *Good v Ash* (1674) 3 Keb 307 per Hale CJ; *Anon* (1674) 1 Vent 257; *Derby Canal Co v Wilmot* (1808) 9 East 360; *Mowatt v Castle Steel and Iron Works Co* (1886) 34 ChD 58, CA; *Mayor etc & Co of Merchants of the Staple of England v Governor & Co of Bank of England* (1887) 21 QBD 160, CA; and see PARA 1265 ante. As to delivery of a deed see DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARA 31.

2 *Derby Canal Co v Wilmot* (1808) 9 East 360; *Mayor etc & Co of Merchants of the Staple of England v Governor & Co of Bank of England* (1887) 21 QBD 160 at 165-166 per Wills J (affd 21 QBD 160 at 170, CA); *Lloyds Bank Ltd v Bullock* [1896] 2 Ch 192 at 196; *London Freehold and Leasehold Property Co v Baron Suffield* [1897] 2 Ch 608 at 620-622, CA. As to the nature of escrows see DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARA 37 et seq.

3 See DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARA 37 et seq.

4 *Mayor etc & Co of Merchants of the Staple of England v Governor & Co of Bank of England* (1887) 21 QBD 160 at 165-166 per Wills J; affd 21 QBD 160 at 170, CA. As to statutory presumptions of delivery see PARA 1265 ante.

5 *Mayor etc & Co of Merchants of the Staple of England v Governor & Co of Bank of England* (1887) 21 QBD 160 at 165-166 per Wills J; affd 21 QBD 160 at 170, CA.

6 *Mayor etc & Co of Merchants of the Staple of England v Governor & Co of Bank of England* (1887) 21 QBD 160 at 165-166 per Wills J (affd 21 QBD 160 at 170, CA); *Vincent v Premo Enterprises (Voucher Sales) Ltd* [1969] 2 QB 609 at 623, [1969] 2 All ER 941 at 948, CA.

7 Law of Property (Miscellaneous Provisions) Act 1989 s 1(1)(c); and see DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARAS 7, 13, 34.

8 'Purchaser' has the same meaning as in the Law of Property Act 1925 s 205(1)(xxi) (see SALE OF LAND vol 42 (Reissue) PARA 55): see the Law of Property (Miscellaneous Provisions) Act 1989 s 1(6) (amended by the Regulatory Reform (Execution of Deeds and Documents) Order 2005, SI 2005/1906, art 10(1), Sch 1 paras 13, 15).

9 Law of Property (Miscellaneous Provisions) Act 1989 s 1(5) (amended by the Regulatory Reform (Execution of Deeds and Documents) Order 2005, SI 2005/1906, arts 9, 10(2), Sch 2); and see DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARAS 7, 13, 34.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(4) EXECUTION OF DEEDS AND DOCUMENTS/1267. Execution by attorney.

1267. Execution by attorney.

A corporation, if it has power to do so under its constitution¹, may by deed appoint and empower an attorney to execute any deed on its behalf². At common law, an individual attorney had to execute a deed in the name and on behalf of the donor³.

A company regulated by the Companies Act 1985⁴ may, by writing under its common seal, empower any person either generally or in respect of any specified matters as its attorney, to execute deeds on its behalf in any place elsewhere than in the United Kingdom⁵. A deed executed by such an attorney on behalf of the company has the same effect as if it were executed under the company's common seal⁶.

Where a person is authorised under a power of attorney or under any statutory or other power to convey any interest in property⁷ in the name or on behalf of a corporation sole or aggregate, he may as attorney execute the conveyance⁸ by signing the name of the corporation in the presence of at least one witness⁹. In relation to instruments executed after 15 September 2005, the witness must attest the signature¹⁰. The execution takes effect and is valid in like manner as if the corporation had executed the conveyance¹¹.

In relation to instruments executed before 15 September 2005¹², the donee of a power conferred by a corporation was empowered, if so authorised by the corporation by the power of attorney, to execute any instrument with his own signature and, where sealing was required, with his own seal¹³. In relation to instruments executed after that date it is provided that if the donee of a power of attorney is an individual, he may, if he thinks fit, execute any instrument with his own signature and do any other thing in his own name, by the authority of the donor of the power; and any instrument executed or thing done in that manner is (provided it is executed according to certain statutory procedures¹⁴) as effective as if executed by the donee in any manner which would constitute due execution of that instrument by the donor or, as the case may be, as if done by the donee in the name of the donor¹⁵.

In relation to instruments executed between 1 January 1926¹⁶ and 15 September 2005, where a corporation aggregate is authorised under a power of attorney or under any statutory or other power to convey any interest in property in the name or on behalf of any other person (including another corporation), an officer appointed for that purpose by the board of directors, council or other governing body of the corporation by resolution or otherwise may execute the deed or other instrument in the name of that other person¹⁷. In relation to instruments executed after 15 September 2005, the officer so appointed may execute the instrument by signing it in the name of such other person or, if the instrument is a deed, by so signing it in the presence of a witness who attests the signature¹⁸. In relation both to instruments executed before and those executed after 15 September 2005, where an instrument appears to be executed by an officer so appointed, then in favour of a purchaser the instrument is deemed to have been executed by an officer duly authorised¹⁹. The Law of Property Act 1925 expressly preserves any other modes of execution or attestation authorised for use by the corporation²⁰.

¹ See eg the Companies (Tables A to F) Regulations 1985, SI 1985/805, Schedule, Table A art 71; and COMPANIES vol 14 (2009) PARA 541.

² *Kidderminster Corpn v Hardwick* (1873) LR 9 Exch 13 at 18, 24; *Oxford Corpn v Crow* [1893] 3 Ch 535 at 539; and see PARA 1273 post. See also DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) para 13.

³ *Frontin v Small* (1726) 2 Ld Raym 1418; *White v Cuyler* (1795) 6 Term Rep 176; *Berkeley v Hardy* (1826) 5 B & C 355; and see DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARA 47.

- 4 For the meaning of 'company' in the Companies Act 1985 see s 735(1)(a).
- 5 Ibid s 38(1). This provision is thought to have been included for the avoidance of doubt on this matter. As to the execution of deeds or documents by a company which has an official seal for use abroad see s 39(3).
- 6 Ibid s 38(2) (substituted by the Companies Act 1989 Sch 17 para 1(1), (3)).
- 7 For these purposes, 'property' includes any thing in action, and any interest in real or personal property: Law of Property Act 1925 s 205(1)(xx).
- 8 For these purposes, 'conveyance' includes mortgages, leases and other assurances: ibid s 205(1)(ii). For the meaning of 'corporation sole' see PARA 1111 ante. For the meaning of 'corporation aggregate' see PARA 1109 ante.
- 9 Ibid s 74(3).
- 10 Ibid s 74(3) (amended by the Regulatory Reform (Execution of Deeds and Documents) Order 2005, SI 2005/1906, art 10, Sch 1 paras 1, 3).
- 11 Law of Property Act 1925 s 74(3) (amended by the Law of Property (Miscellaneous Provisions) Act 1989 s 4, Sch 2). An instrument to which the Law of Property Act 1925 s 74(3) (as amended) (see the text and notes 7-10 supra) applies may be executed either as provided in s 74(3) (as amended) or as provided in the Powers of Attorney Act 1971 s 7 (as amended) (see the text and notes 12-15 infra): s 7(2) (amended by the Law of Property (Miscellaneous Provisions) Act 1989 ss 1, 4, Sch 1 para 7(2)(a), (b), Sch 2). A power of attorney is necessary where an agent has to execute a deed: see AGENCY vol 1 (2008) PARA 16.
- 12 See the Regulatory Reform (Execution of Deeds and Documents) Order 2005, SI 2005/1906, art 1(1).
- 13 See the Powers of Attorney Act 1971 s 7(1) (amended by the Law of Property (Miscellaneous Provisions) Act 1989 Sch 1 para 7(1)). This provision applies whenever the power of attorney was created: Powers of Attorney Act 1971 s 7(4).
- 14 Where an instrument is executed by the donee as a deed, it is as effective as if executed by the donee in a manner which would constitute due execution of it as a deed by the donor only if it is executed in accordance with the Law of Property (Miscellaneous Provisions) Act 1989 s 1(3)(a) (ie it must be signed by the individual in the presence of a witness who attests the signature or it must be signed at his direction and in his presence and the presence of two witnesses who each attest the signature): Powers of Attorney Act 1971 s 7(1A) (added by the Regulatory Reform (Execution of Deeds and Documents) Order 2005, SI 2005/1906, art 10(1), Sch 1 paras 5, 7).
- 15 Powers of Attorney Act 1971 s 7(1) (amended by the Regulatory Reform (Execution of Deeds and Documents) Order 2005, SI 2005/1906, Sch 1 paras 5, 6). This provision applies whenever the power of attorney was created: Powers of Attorney Act 1971 s 7(4).
- 16 The provisions of the Law of Property Act 1925 s 74 (as amended) apply to transactions wherever effected, but only to deeds and instruments executed after 31 December 1925, except that, in the case of powers or appointments of an agent or officer, they apply whether the power was conferred or the appointment was made before or after that date or by the Act itself: s 74(5).
- 17 Ibid s 74(4).
- 18 Ibid s 74(4) (amended by the Regulatory Reform (Execution of Deeds and Documents) Order 2005, SI 2005/1906, Sch 1 paras 1, 4(a), (b)).
- 19 Law of Property Act 1925 s 74(4).
- 20 Notwithstanding anything contained in ibid s 74 (as amended), any mode of execution or attestation authorised by law or by practice or by the statute, charter, memorandum or articles, deed of settlement or other instrument constituting the corporation or regulating its affairs, is (in addition to the modes authorised by s 74 (as amended)) as effectual as if s 74 had not been passed: s 74(6).

UPDATE

1267 Execution by attorney

NOTE 4--Companies Act 1985 s 735(1)(a) replaced by Companies Act 2006 s 1(1): see COMPANIES vol 14 (2009) PARA 24.

NOTES 5, 6--Companies Act 1985 ss 38, 39(3) replaced by Companies Act 2006 ss 47, 49(4): see COMPANIES vol 14 (2009) PARAS 289, 290.

NOTE 20--Law of Property Act 1925 s 74(6) amended: SI 2009/1941.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(4) EXECUTION OF DEEDS AND DOCUMENTS/1268. Execution by a company incorporated outside Great Britain.

1268. Execution by a company incorporated outside Great Britain.

A document is executed by a company incorporated outside Great Britain¹ by the affixing of its common seal or if it is executed in any manner permitted by the laws of the territory in which the company is incorporated for the execution of documents by such a company². A document which is signed by a person or persons who, in accordance with the laws of the territory in which such a company is incorporated, is or are acting under the authority, express or implied, of that company, and is expressed, in whatever form of words, to be executed by the company, has the same effect in relation to that company as it would have in relation to a company incorporated in England and Wales if executed under the common seal of a company so incorporated³. In favour of a purchaser a document is deemed to have been duly executed by such a company if it purports to be signed by a person or persons who, in accordance with the laws of the territory in which the company is incorporated, is or are acting under the authority, express or implied, of that company, and, where it makes it clear on its face that it is intended by the person or persons making it to be a deed, to have been delivered upon its being executed⁴.

1 There appears to be some uncertainty as to the corporations to which these provisions apply (see *The Execution of Deeds and Documents by or on behalf of Bodies Corporate* (Law Com no 253) (1998) PARAS 4.33, 4.34); but this does not appear to cause a problem in practice (see *The Execution of Deeds and Documents by or on behalf of Bodies Corporate* (Law Com no 253) (1998) PARA 4.38).

2 Companies Act 1985 s 36A(2) (added by the Companies Act 1989 s 130(2); and modified by the Foreign Companies (Execution of Document) Regulations 1994, SI 1994/950, regs 2, 3, 5(a)).

3 Companies Act 1985 s 36A(4) (as added (see note 2 supra); and modified by the Foreign Companies (Execution of Document) Regulations 1994, SI 1994/950, regs 2, 3, 5(b)).

4 Companies Act 1985 s 36A(6) (as added (see note 2 supra); and modified by the Foreign Companies (Execution of Document) Regulations 1994, SI 1994/950, regs 2, 3, 5(c)).

The effect is to create an irrebuttable presumption of delivery. However, the presumption of delivery is repealed with effect from 15 September 2005: see the Regulatory Reform (Execution of Deeds and Documents) Order 2005, SI 2005/1906, art 6. The Companies Act 1985 s 36AA (as added) (see PARA 1265 ante), which mirrors the provisions of the Law of Property Act 1925 s 74A (as added) and provides a rebuttable presumption of delivery, has not been applied to companies incorporated outside Great Britain: see the Foreign Companies (Execution of Document) Regulations 1994, SI 1994/950, reg 2 (amended by SI 1995/1729).

UPDATE

1268 Execution by a company incorporated outside Great Britain

TEXT AND NOTES--1985 Act s 36A replaced with amendments: see Companies Act 2006 s 44; and PARA 1263.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/ (5) LIABILITY IN CONTRACT/(i) In general/1269. Restrictions.

(5) LIABILITY IN CONTRACT

(i) In general

1269. Restrictions.

A corporation is as fully capable of binding itself by any contract as is an individual¹, except as to those contracts which from the nature or objects of the corporation, or from the express or implied terms of its constitution, it is prohibited from making².

A contract purporting to be made on behalf of a corporation before it is incorporated cannot be adopted or ratified by it after incorporation³. It is necessary for a new contract to be made embodying the terms of the old contract⁴. The mere fact that a corporation has obtained the advantage of payments made or work done before its incorporation does not render it liable to repay the sums expended, or to pay the cost of the work⁵.

In some cases corporations are by their constitutions required to observe certain formalities when making contracts for particular purposes. In these cases the requirements of the constitution must in general be strictly carried out⁶.

In favour of a person dealing with a company regulated by the Companies Act 1985 in good faith, the power of the board of directors to bind the company, or authorise others to do so, is deemed to be free of any limitation under the company's constitution⁷.

In certain other cases contracts entered into by corporate bodies are governed by general enabling Acts of Parliament⁸.

The statutory protection given to debtors or hirers by the Consumer Credit Act 1974 is not available to corporations⁹.

1 *Bateman v Ashton-under-Lyne Corpn* (1858) 3 H & N 323 at 335 per Martin B. Thus a contract of apprenticeship may be made between an individual and a corporation aggregate so as to bind the individual as apprentice to the corporation as master: *Burnley Equitable Co-operative and Industrial Society Ltd v Casson* [1891] 1 QB 75, DC. For the meaning of 'corporation aggregate' see PARA 1109 ante. See also *Stone v Yeovil Corpn* (1876) 2 CPD 99, CA; *Newcastle-upon-Tyne Corpn v A-G, A-G v Newcastle-upon-Tyne Corpn and North Eastern Rly Co* [1892] AC 568, HL; *Eastern Union Rly Co v Hart* (1852) 8 Exch 116, Ex Ch. As to the essentials of a binding contract see further CONTRACT vol 9(1) (Reissue) 603 et seq.

2 *Shrewsbury and Birmingham Rly Co v North Western Rly Co* (1857) 6 HL Cas 113; *Preston v Liverpool, Manchester and Newcastle-upon-Tyne Junction Rly Co* (1856) 5 HL Cas 605; *Scottish North-Eastern Rly Co v Stewart* (1859) 3 Macq 382, HL; *East Anglian Rlys Co v Eastern Counties Rly Co* (1851) 11 CB 775; *Ashbury Rly Carriage and Iron Co v Riche* (1875) LR 7 HL 653; *Bateman v Ashton-under-Lyne Corpn* (1858) 3 H & N 323. As to limitation of powers generally see PARA 1230 et seq ante. As to contracts which are beyond the scope of the constitution of the corporation but are validated by the Companies Act 1985 s 35 (as substituted and amended) and s 35A (as added and amended) see the text and note 7 infra; para 1232 ante.

3 *Kelner v Baxter* (1866) LR 2 CP 174. As to contracts by promoters and directors of companies see COMPANIES vol 14 (2009) PARAS 63, 279. A contract which purports to be made by or on behalf of a company within the meaning of the Companies Act 1985 (see COMPANIES vol 14 (2009) PARA 1) at a time when the company has not been formed, has effect, subject to any agreement to the contrary, as one made with the person purporting to act for the company or as agent for it, and he is personally liable on the contract accordingly: see s 36C (as added). See also *Phonogram Ltd v Lane* [1982] QB 938, [1981] 3 All ER 182, CA.

4 *Natal Land and Colonisation Co v Pauline Colliery Syndicate* [1904] AC 120 at 126, PC.

5 *Re National Motor Mail-Coach Co Ltd, Clinton's Claim* [1908] 2 Ch 515, CA; *Re English and Colonial Produce Co Ltd* [1906] 2 Ch 435 at 442, CA, per Romer LJ; *Falcke v Scottish Imperial Insurance Co* (1886) 34 ChD 234 at 250, CA, per Bowen LJ.

6 Thus an appointment of an agent of a railway company to negotiate with another railway company for a lease of the line was held to be bad, because, although made by resolution of the board of directors and signed by the chairman, it was not under the company's seal or signed by three directors as required by the company's special Act: *Cope v Thames Haven Dock and Rly Co* (1849) 3 Exch 841. See also *Stevens v Hounslow Burial Board* (1889) 61 LT 839; *Frend v Dennett* (1858) 4 CBNS 576; *Hunt v Wimbledon Local Board* (1878) 4 CPD 48, CA; *Eaton v Basker* (1881) 7 QBD 529, CA; *Crampton v Varna Rly Co* (1872) 7 Ch App 562. As to notice of the constitution of the corporation see PARA 1236 ante. As to contracts which may be made orally or in writing see PARA 1272 post; and as to the power to appoint an agent to execute an instrument not under seal see PARA 1273 post.

7 See the Companies Act 1985 s 35A (as added and amended); para 1232 ante.

8 See eg the Lands Clauses Consolidation Act 1845 s 6 and the Compulsory Purchase Act 1965 s 3 (as amended) (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARAS 549-550); the Companies Clauses Consolidation Act 1845 s 97 (as amended) (see COMPANIES vol 15) (2009) PARA 1775); and the Local Government Act 1972 s 135 (see LOCAL GOVERNMENT vol 69 (2009) PARA 492).

9 See the Consumer Credit Act 1974 s 8 (as amended) (meanings of 'personal credit agreement' and 'consumer credit agreement') and s 15 (as amended) (meaning of 'consumer hire agreement'); and CONSUMER CREDIT vol 9(1) (Reissue) PARAS 81-82. The Consumer Credit Act 1974 does not apply to consumer credit agreements if the creditor is a local authority or one of certain other categories of corporation: see s 16 (as amended); and CONSUMER CREDIT vol 9(1) (Reissue) PARA 100.

UPDATE

1269 Restrictions

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTES 2, 7--Companies Act 1985 s 35A replaced by Companies Act 2006 s 40: see COMPANIES vol 14 (2009) PARA 263.

NOTE 3--Companies Act 1985 s 36C replaced by Companies Act 2006 s 51: see COMPANIES vol 14 (2009) PARA 66.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/ (5) LIABILITY IN CONTRACT/(i) In general/1270. Contract between corporation and member.

1270. Contract between corporation and member.

A member entering into a contract with a corporation is, for all the purposes connected with the contract, deemed to be a stranger to the corporation¹.

1 *Hill v Manchester and Salford Water Works Co* (1833) 2 Nev & MKB 573 at 582.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/ (5) LIABILITY IN CONTRACT/(i) In general/1271. Contracts with corporations sole.

1271. Contracts with corporations sole.

At common law a personal contract with a corporation sole¹, though made not for his personal benefit, but for that of himself and his successors, passed on his death to his legal personal representatives²; but it would appear that now any property or any interest therein which vested in a corporation sole by virtue of any contract passes to the successors³.

Any contract or other transaction expressed or purported to be made with a corporation sole when there is a vacancy in the office takes effect, on the vacancy being filled, as if it had been filled before the contract or transaction was expressed to be made or was capable of taking effect and, on the appointment of a successor, is capable of being enforced, accepted or disclaimed by him⁴.

1 For the meaning of 'corporation sole' see PARA 1111 ante.

2 *Howley v Knight* (1849) 14 QB 240 at 255.

3 See the Law of Property Act 1925 ss 180(1), 205(1)(xx); and PARAS 1248, 1260 ante.

4 *Ibid* s 180(3). This applies to contracts and transactions made before, on or after 1 January 1926: s 180(3).

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/ (5) LIABILITY IN CONTRACT/(ii) Form of Contracts/1272. Form of contract.

(ii) Form of Contracts

1272. Form of contract.

In the case of a company regulated by the Companies Act 1985¹, a contract may under the law of England and Wales be made by a company by writing under its common seal² or on behalf of a company by any person acting under its authority, express or implied; and any formalities required by law in the case of a contract made by an individual³ also apply, unless a contrary intention appears, to a contract made by or on behalf of a company⁴.

In the case of a company incorporated outside the United Kingdom, a contract may under the law of England and Wales be made by a company by writing under its common seal or in any manner permitted by the laws of the territory in which the company is incorporated for the execution of documents by such a company or on behalf of a company by any person who, in accordance with the laws of the territory in which the company is incorporated, is acting under the authority, express or implied, of that company; and any formalities required by law in the case of a contract made by an individual also apply, unless a contrary intention appears, to a contract made by or on behalf of a company⁵.

Similar provisions apply to incorporated friendly societies⁶ and open-ended investment companies⁷.

In the case of a body corporate which is not regulated by the Companies Act 1985, a contract which, if made between private persons, would be required by law to be in writing and signed by the parties to be charged with it may be made on behalf of a body corporate, wherever

incorporated, in writing signed by any person acting under its authority, express or implied⁸. A contract which, if made between private persons, would by law be valid although made orally and not reduced into writing may be made orally on behalf of any such body corporate by any person acting under its authority, express or implied⁹. Such a contract is effectual in law and binds the body corporate and its successors and all other parties to it¹⁰.

1 For the meaning of 'company' in the Companies Act 1985 see s 735(1)(a).

2 A document signed by a director and the secretary of a company, or by two directors of a company, and expressed, in whatever form of words, to be executed by the company has the same effect as if executed under the common seal of the company: see *ibid* s 36A(4) (as added); and PARA 1263 ante. As to the seal see PARA 1122 ante.

3 Eg a contract for sale or other disposition of an interest in land can only be made in writing: see the Law of Property (Miscellaneous Provisions) Act 1989 s 2(1); and REAL PROPERTY. For exceptions see s 2(5) (as amended); and SALE OF LAND vol 42 (Reissue) PARA 29.

4 Companies Act 1985 s 36 (substituted by the Companies Act 1989 s 130(1)). As to the application of the Companies Act 1985 s 36 (as substituted) to unregistered companies see COMPANIES.

5 *Ibid* s 36 (substituted by the Companies Act 1989 s 130(1); and applied with modifications by the Foreign Companies (Execution of Documents) Regulations 1994, SI 1994/950, reg 4(1)).

6 See the Friendly Societies Act 1992 s 7(6), Sch 6 paras 1, 2; and FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 2118.

7 See the Open-Ended Investment Companies Regulations 2001, SI 2001/1228, reg 56; and FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 647.

8 Corporate Bodies' Contracts Act 1960 s 1(1)(a).

9 *Ibid* s 1(1)(b).

10 *Ibid* s 1(2). Nothing in s 1 prevents a contract under seal being made by or on behalf of a body corporate: s 1(4). As to the former general rule, that a contract made by a corporation had to be under seal, and as to the exceptions to that rule see PARA 1274 post.

UPDATE

1272 Form of contract

NOTE 1--Companies Act 1985 s 735(1)(a) replaced by Companies Act 2006 s 1(1): see COMPANIES vol 14 (2009) PARA 24.

NOTES 4, 5--Companies Act 1985 s 36 replaced by Companies Act 2006 s 43: see COMPANIES vol 14 (2009) PARA 282.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/ (5) LIABILITY IN CONTRACT/(ii) Form of Contracts/1273. Execution of contracts by agents.

1273. Execution of contracts by agents.

The board of directors, council or other governing body of a corporation aggregate¹ may, by resolution or otherwise, appoint an agent, either generally or in any particular case, to execute on behalf of the corporation any agreement or other instrument which is not a deed in relation

to any matter within the powers of the corporation². Where the agent is given power to execute a deed, the power itself must be contained in a deed³.

1 For the meaning of 'corporation aggregate' see PARA 1109 ante.

2 Law of Property Act 1925 s 74(2) (amended by the Law of Property (Miscellaneous Provisions) Act 1989 s 1(8), Sch 1 paras 1, 3). See also PARA 1267 ante.

3 See AGENCY vol 1 (2008) PARAS 15-16. Any rule of law which requires authority by one person to another to deliver an instrument as a deed on his behalf to be given by deed has, however, been abolished: see the Law of Property (Miscellaneous Provisions) Act 1989 s 1(1)(c); and PARA 1267 ante.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/ (5) LIABILITY IN CONTRACT/(ii) Form of Contracts/1274. Variation and discharge of contracts.

1274. Variation and discharge of contracts.

A contract made on behalf of a corporation may be varied or discharged in the same manner in which it is authorised by statute to be made¹. A contract made by a corporation (other than a company registered under the Companies Acts) before 29 July 1960² can, however, only be varied or discharged by a subsequent agreement if the latter is made in a form in which such a contract could have been made before 29 July 1960³. In the case of such a corporation a contract normally had to be made under seal⁴, although there were numerous exceptions to this rule⁵.

1 Corporate Bodies' Contracts Act 1960 s 1(3). This Act does not apply to any company formed and registered under the Companies Act 1985, to an existing company as defined in the Companies Act 1985, or to a limited liability partnership: Corporate Bodies' Contracts Act 1960 s 2 (amended by the Companies Consolidation (Consequential Provisions) Act 1985 s 30, Sch 2; and the Limited Liability Partnerships Regulations 2001, SI 2001/1090, reg 9(1), Sch 5 para 3). The principle expressed in the Corporate Bodies' Contracts Act 1960 s 1(3) is no longer spelt out in relation to companies regulated by the Companies Act 1985 (see s 36 (as substituted)); but there can be no doubt that it applies to such companies.

2 Ie the date of the commencement of the Corporate Bodies' Contracts Act 1960.

3 See *ibid* s 1(5).

4 *Bac Abr*, Corporations, E3; *Vin Abr*, Corporations, G2; 1 *Wms Saund* (6th Edn) 340n; *Ludlow Corpn v Charlton* (1840) 6 M & W 815 at 823; *AR Wright & Son Ltd v Romford Corpn* [1957] 1 QB 431, [1956] 3 All ER 785. As to the use of the seal today see PARAS 1122-1124, 1261 et seq ante.

5 The principal types of contracts which were not required to be made under seal were:

- 3 (1) contracts made by corporations enabled by the express terms of their constitution to contract without a seal (*R v Cumberland Justices* (1848) 17 LJQB 102; *Scott v Clifton School Board* (1884) 14 QBD 500; *Tilson v Warwick Gas Light Co* (1825) 4 B & C 962);
- 4 (2) bills of exchange, cheques and promissory notes of a corporation having power to incur liability on such documents (see the Bills of Exchange Act 1882 s 91(2); para 1237 ante; and FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1466; COMPANIES vol 14 (2009) PARA 293);
- 5 (3) contracts relating to trivial matters of daily occurrence or to matters of urgent necessity (*Wells v Kingston-upon-Hull Corpn* (1875) LR 10 CP 402; *Church v Imperial Gas Light and Coke Co* (1838) 6 Ad & El 846 at 861; *Ludlow Corpn v Charlton* (1840) 6 M & W 815 at 822; *East London Waterworks Co v Bailey* (1827) 4 Bing 283; *Lawford v Billericay RDC* [1903] 1 KB 772 at 785, CA, per Mathew LJ); and

- 6 (4) contracts for purposes connected with the objects of the incorporation of a corporation incorporated for trading purposes (*Beverley v Lincoln Gas Light and Coke Co* (1837) 2 Nev & PKB 283; *Church v Imperial Gas Light and Coke Co* (1838) 6 Ad & El 846; *Henderson v Australian Royal Mail Steam Navigation Co* (1855) 5 E & B 409; *Reuter v Electric Telegraph Co* (1856) 6 E & B 341; *Australian Royal Mail Steam Navigation Co v Marzetti* (1855) 11 Exch 228; *Re Contract Corp'n Ebbw Vale Co's Claim* (1869) LR 8 Eq 14; *South of Ireland Colliery Co v Waddle* (1869) LR 4 CP 617, Ex Ch).

UPDATE

1274 Variation and discharge of contracts

NOTE 1--Corporate Bodies' Contracts Act 1960 s 2 substituted: SI 2009/1941.
Companies Act 1985 s 36 replaced by Companies Act 2006 s 40: see COMPANIES vol 14 (2009) PARA 282.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(6) LIABILITY IN TORT/1275. Torts committed by a corporation.

(6) LIABILITY IN TORT

1275. Torts committed by a corporation.

A corporation aggregate¹ is liable to be sued for any tort, provided that:

- 26 (1) it is a tort in respect of which a claim could be brought against a private individual²;
- 27 (2) the person by whom the tort is actually committed is acting within the scope of his authority³ and in the course of his employment as agent of the corporation⁴; and
- 28 (3) the act complained of is not one which the corporation would not, in any circumstances, be authorised by its constitution to commit⁵, unless perhaps the corporation has expressly authorised the act⁶.

Thus a claim may be brought against a corporation for conversion⁷, for trespass⁸, for wrongful distress⁹, for assault¹⁰, for negligence¹¹, for nuisance¹², for false imprisonment¹³, for infringement of a patent¹⁴, for keeping a dangerous animal¹⁵, for breach of trust¹⁶, for fraud¹⁷, and for torts involving malice such as malicious prosecution¹⁸ and libel¹⁹.

1 For the meaning of 'corporation aggregate' see PARA 1109 ante.

2 *Green v London General Omnibus Co* (1859) 7 CBNS 290 at 302 per Erle CJ.

3 *Barwick v English Joint Stock Bank* (1867) LR 2 Exch 259, Ex Ch. See TORT vol 45(2) (Reissue) PARAS 817-818.

4 *Barwick v English Joint Stock Bank* (1867) LR 2 Exch 259, Ex Ch; *Lloyd v Grace, Smith & Co* [1912] AC 716, HL; *Percy v Glasgow Corp'n* [1922] 2 AC 299, HL. See TORT vol 45(2) (Reissue) PARAS 819-820. If the agent is so acting, it is immaterial that the act in question has been prohibited by the corporation: *Limpus v London General Omnibus Co* (1862) 1 H & C 526, Ex Ch. See also the authorities cited in TORT vol 45(2) (Reissue) PARA 820. As to liability between principal and agent see further AGENCY vol 1 (2008) PARA 71 et seq.

5 *Mill v Hawker* (1875) LR 10 Exch 92, Ex Ch; *Poulton v London and South Western Rly Co* (1867) LR 2 QB 534; *Ormiston v Great Western Rly Co* [1917] 1 KB 598; *Mandelston v North British Rly Co* 1917 SC 442, Ct of Sess. See also AGENCY vol 1 (2008) PARAS 151-152; COMPANIES vol 14 (2009) PARA 296.

6 See *Campbell v Paddington Corpn* [1911] 1 KB 869 at 875, DC, per Avory J, and at 878 per Lush J. See also PARA 1276 note 6 post.

7 *Yarborough v Bank of England* (1812) 16 East 6; *Giles v Taff Vale Rly Co* (1853) 2 E & B 822, Ex Ch; cf *Hall v Swansea Corpn* (1844) 5 QB 526. See also TORT vol 45(2) (Reissue) PARA 601.

8 *Maund v Monmouthshire Canal Co* (1842) Car & M 606 at 609; and see *Mill v Hawker* (1875) LR 10 Exch 92, Ex Ch (a surveyor, being instructed by a highway board in its corporate capacity to do an act which was in fact a trespass, was held liable for the trespass, and the court expressly declined to give any opinion as to the liability of the individual members of the board). See also TORT vol 45(2) (Reissue) PARA 601 et seq.

9 *Smith v Birmingham and Staffordshire Gas Light Co* (1834) 1 Ad & El 526; and see DISTRESS vol 13 (2007 Reissue) PARA 926.

10 *Eastern Counties Rly Co v Broom* (1851) 6 Exch 314, Ex Ch; *Whittaker v LCC* [1915] 2 KB 676. See also TORT vol 45(2) (Reissue) PARA 427 et seq.

11 *Green v London General Omnibus Co* (1859) 7 CBNS 290; *Limpus v London General Omnibus Co* (1862) 1 H & C 526, Ex Ch; *Scott v Manchester Corpn* (1857) 2 H & N 204, Ex Ch; *Mersey Docks and Harbour Board Trustees v Gibbs* (1866) LR 1 HL 93; *Hardaker v Idle District Council* [1896] 1 QB 335, CA; *Black v Christchurch Finance Co* [1894] AC 48, PC; *Cooke v Midland Great Western Rly of Ireland* [1909] AC 229, HL; *Gesner v Wallingford and District Labour Party Supporters' Association Club Ltd* (1994) Times, 2 June, CA. See also NEGLIGENCE vol 78 (2010) PARA 1 et seq.

12 *Bathurst Borough v Macpherson* (1879) 4 App Cas 256, PC; *Campbell v Paddington Corpn* [1911] 1 KB 869, DC. See also NUISANCE vol 78 (2010) PARA 181 et seq.

13 *Goff v Great Northern Rly Co* (1861) 3 E & E 672; *Moore v Metropolitan Rly Co* (1872) LR 8 QB 36; cf *Sewell v National Telephone Co Ltd* [1907] 1 KB 557, CA. As to habeas corpus see PARA 1294 post.

14 *Betts v De Vitre* (1868) 3 Ch App 429 at 441; on appeal sub nom *De Vitre v Betts* (1873) LR 6 HL 319. See also PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 500 et seq.

15 *Stiles (or Styles) v Cardiff Steam Co* (1864) 33 LJQB 310; *Filburn v People's Palace and Aquarium Co* (1890) 25 QBD 258, CA (liability at common law). As to the liability of owners and keepers of animals see ANIMALS vol 2 (2008) PARA 747 et seq.

16 *A-G v Leicester Corpn* (1844) 7 Beav 176; and see TRUSTS vol 48 (2007 Reissue) PARA 1084 et seq.

17 *Barwick v English Joint Stock Bank* (1867) LR 2 Exch 259, Ex Ch. See also *Mackay v Commercial Bank of New Brunswick* (1874) LR 5 PC 394; *Houldsworth v City of Glasgow Bank* (1880) 5 App Cas 317 at 326, HL, per Lord Selborne; *S Pearson & Son Ltd v Dublin Corpn* [1907] AC 351, HL; *Lloyd v Grace, Smith & Co* [1912] AC 716, HL. In such a case the agent, if involved in the fraud, may be made a party to the claim in order to make him liable for the costs, although no relief is claimed against him: *Le Texier v Margravine of Anspach* (1808) 15 Ves 159 at 164. See also COMPANIES vol 14 (2009) PARA 297; MISREPRESENTATION AND FRAUD vol 31 (2003 Reissue) PARA 797.

18 *Cornford v Carlton Bank Ltd* [1900] 1 QB 22, CA; *Edwards v Midland Rly Co* (1880) 6 QBD 287; *Bank of New South Wales v Owston* (1879) 4 App Cas 270, PC. For the contrary view, however, see *Abrath v North Eastern Rly Co* (1886) 11 App Cas 247 at 250, HL, per Lord Bramwell; *Stevens v Midland Counties Rly Co* (1854) 10 Exch 352. See also TORT vol 45(2) (Reissue) PARA 458 et seq.

19 *Whitfield v South Eastern Rly Co* (1858) EB & E 115; *Citizens' Life Assurance Co v Brown* [1904] AC 423, PC; *Pratt v British Medical Association* [1919] 1 KB 244; cf *Glasgow Corpn v Lorimer* [1911] AC 209, HL. Express malice on the part of an agent does not destroy qualified privilege and render the corporation liable if the agent has nothing to do with the composition of the libel but merely does the mechanical act of distributing it: *Adam v Ward* [1917] AC 309 at 331, 341, HL. See also LIBEL AND SLANDER vol 28 (Reissue) PARA 34.

1276. Principles governing liability.

In order to fix a corporation with liability, the relationship of principal and agent, or of employer and employee, must be established between the corporation and the person who commits the tort¹ in respect of the tort in question². It is not necessary to prove that the agent was in any way formally appointed³. Express authority to commit the tort need not be proved⁴; it is sufficient to show that a tort committed by an employee fell within the scope of the authority to be inferred from his employment⁵. Where the wrongful act is done without the express authority of the corporation, an authority from the corporation cannot be implied if the act is outside the statutory powers of the corporation⁶.

1 See PARA 1275 ante; and AGENCY vol 1 (2008) PARA 150 et seq. The fact that a duty to appoint an officer is imposed on a public authority does not, of itself, establish such a relationship between an officer and the authority: see *Fisher v Oldham Corpn* [1930] 2 KB 364 (appointment of police by borough watch committee); and see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 182 et seq.

2 *Allen v London and South Western Rly Co* (1870) LR 6 QB 65; *Edwards v London and North Western Rly Co* (1870) LR 5 CP 445; *Poulton v London and South Western Rly Co* (1867) LR 2 QB 534; *Fisher v Oldham Corpn* [1930] 2 KB 364.

3 *Giles v Taff Vale Rly Co* (1853) 2 E & B 822, Ex Ch.

4 *Citizens' Life Assurance Co v Brown* [1904] AC 423, PC. As to an employer's liability for acts expressly authorised see TORT vol 45(2) (Reissue) PARA 817.

5 *Limpus v London General Omnibus Co* (1862) 1 H & C 526, Ex Ch (prohibited act); *Barwick v English Joint Stock Bank* (1867) LR 2 Exch 259, Ex Ch (fraud); *Mackay v Commercial Bank of New Brunswick* (1874) LR 5 PC 394 (malicious act); *Citizens' Life Assurance Co Ltd v Brown* [1904] AC 423, PC (libel); *Moore v Metropolitan Rly Co* (1872) LR 8 QB 36 (false imprisonment); *Poulton v London and South Western Rly Co* (1867) LR 2 QB 534 (false imprisonment); *Cornford v Carlton Bank* [1899] 1 QB 392 (following *Edwards v Midland Rly Co* (1880) 6 QBD 287) (affd [1900] 1 QB 22, CA); and see *Bank of New South Wales v Owston* (1879) 4 App Cas 270, PC (malicious prosecution); *Bayley v Manchester, Sheffield and Lincolnshire Rly Co* (1873) LR 8 CP 148, Ex Ch (assault); *Evans v Liverpool Corpn* [1906] 1 KB 160 (negligence); *Gold v Essex County Council* [1942] 2 KB 293, [1942] 2 All ER 237, CA (liability of hospital authorities; and liability of health authorities for acts or omissions of employees); *Lambert v Great Eastern Rly Co* [1909] 2 KB 776, CA (liability of railway company for tortious acts of special constables). See also *UBAF Ltd v European American Banking Corpn* [1984] QB 713, [1984] 2 All ER 226, CA (authority to sign for the purposes of the Statute of Frauds Amendment Act 1828 s 6). See generally TORT vol 45(2) (Reissue) PARAS 818-820.

6 *Campbell v Paddington Corpn* [1911] 1 KB 869 at 878, DC, per Lush J, explaining *Poulton v London and South Western Rly Co* (1867) LR 2 QB 534. The statement of Blackburn J in *Poulton v London and South Western Rly Co* supra at 540, to the effect that even express authority from a corporation to its agent to commit an ultra vires tort would not render the corporation liable, is in conflict with the decision in *Campbell v Paddington Corpn* supra. See TORT vol 45(2) (Reissue) PARA 827.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(6) LIABILITY IN TORT/1277. Holding out.

1277. Holding out.

A corporation is not liable on a document forged by its agent or servant unless it has given him authority, or held him out as having authority, to give a warranty that the document is genuine¹.

Where an act purporting to be on behalf of a corporation is done without authority, express or implied, the corporation may render itself liable by subsequent ratification², provided that the act is capable of being ratified by the corporation in question³.

1 *Ruben v Great Fingall Consolidated* [1906] AC 439, HL; and see PARAS 1262, 1265, 1267 ante.

2 *Smith v Birmingham and Staffordshire Gas Light Co* (1834) 1 Ad & El 526; *Eastern Counties Rly Co v Broom* (1851) 6 Exch 314. See generally AGENCY vol 1 (2008) PARA 57 et seq. Where acts proper to be performed by a corporation aggregate are done by its permanent officials and agents in its name, and are afterwards acted on by the corporation, such acts are the acts of the corporation, or, at any rate, have been ratified by it: *Cheetham v Manchester Corpn* (1875) LR 10 CP 249. For the meaning of 'corporation aggregate' see PARA 1109 ante. Where a servant of a corporation authorises a person to take possession of a piece of land belonging to it, and subsequently another servant of the same corporation serves him with notice to give up possession, it may be inferred that both servants were duly authorised by the corporation so to act notwithstanding that no lease or notice or appointment of the servants as agents is produced: *Doe d Birmingham Canal Navigations Co of Proprietors v Bold* (1847) 11 QB 127; cf *Wilson v West Hartlepool Rly Co* (1865) 2 De GJ & Sm 475.

3 *Poulton v London and South Western Rly Co* (1867) LR 2 QB 534.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(6) LIABILITY IN TORT/1278. Civil liability in relation to statutory powers.

1278. Civil liability in relation to statutory powers.

No claim lies at common law for damages inevitably caused by a proper exercise of statutory functions¹, although the corporation exercising them must use due diligence to prevent damage to others resulting².

Whether a corporation is liable civilly for a breach of statutory duty depends on the terms and construction of the statute³; and it has been held that where an Act of Parliament imposed duties on a trading corporation for the benefit of its customers, but provided neither a penalty for default nor any right of action at the suit of the persons aggrieved, no right of action lay at the suit of a private individual for failure to comply with the requirements of the Act⁴. A private individual may, however, have a right of action where peculiar injury is suffered, over and above injury suffered by the public at large⁵.

1 See *Manchester Corpn v Farnworth* [1930] AC 171 at 183, HL, per Lord Dunedin.

2 *Manchester Corpn v Farnworth* [1930] AC 171, HL; *Mersey Docks and Harbour Board Trustees v Gibbs* (1866) LR 1 HL 93; and see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 188 et seq.

3 See eg *Cutler v Wandsworth Stadium Ltd* [1949] AC 398 at 407, [1949] 1 All ER 544 at 548, HL, per Lord Simonds; and STATUTES vol 44(1) (Reissue) PARA 1360; TORT vol 45(2) (Reissue) PARA 395 et seq.

4 *Johnston and Toronto Type Foundry Co v Toronto Consumers' Gas Co* [1898] AC 447, PC (audit of accounts of corporation by the local authority); and see STATUTES vol 44(1) (Reissue) PARA 1349.

5 See *Booth & Co (International) Ltd v National Enterprise Board* [1978] 3 All ER 624.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(6) LIABILITY IN TORT/1279. Torts committed against corporation.

1279. Torts committed against corporation.

A corporation may sue for any tort¹, as, for example, the malicious presenting of a petition for its winding up², in the same way as an individual³, except for torts of a purely personal nature⁴. Thus it may bring a claim for a libel affecting its property⁵ or reputation, unless the imputation

is solely against its individual officers or members⁶. A body corporate may also bring a complaint for unwarranted infringement of privacy under the Broadcasting Act 1996⁷. A trading corporation may maintain an action for a libel reflecting on the management of its trade or business, and this without alleging or proving special damage⁸. The words complained of must attack the corporation in the method of conducting its affairs, accuse it of fraud or mismanagement, or attack its financial position⁹. A government authority, whether central or local, has, however, no right at common law to maintain an action for defamation¹⁰. Similarly, it is contrary to the public interest for a political party, even when set up as a corporation, to have any right at common law to maintain an action for defamation¹¹.

1 See eg the cases cited in notes 5-9 infra.

2 *Quartz Hill Consolidated Gold Mining Co v Eyre* (1883) 11 QBD 674, CA.

3 *Wallasey Local Board v Gracey* (1887) 36 ChD 593.

4 *South Hetton Coal Co v North Eastern News Association* [1894] 1 QB 133 at 141, CA, per Lopes LJ.

5 *Linotype Co Ltd v British Empire Type-setting Machine Co Ltd* (1899) 81 LT 331, HL; *Thorley's Cattle Food Co v Massam* (1880) 14 ChD 763, CA.

6 See *National Union of General and Municipal Workers v Gillian* [1946] KB 81, [1945] 2 All ER 593, CA; *Willis v Brooks* [1947] 1 All ER 191; *Bognor Regis UDC v Campion* [1972] 2 QB 169, [1972] 2 All ER 61. In all of these cases *Manchester Corp v Williams* [1891] 1 QB 94, DC (more fully reported in 63 LT 805) was distinguished and criticised.

7 *R v Broadcasting Standards Commission, ex p BBC* [2001] QB 885, [2000] 3 All ER 989, CA (although the possible intrusions into the privacy of an individual were more extensive than the possible infringements of privacy in the case of a company, the latter did have activities of a private nature which needed protection from unwarranted intrusion).

8 *South Hetton Coal Co v North-Eastern News Association* [1894] 1 QB 133, CA; *D and L Caterers Ltd and Jackson v D'Ajou* [1945] KB 364, [1945] 1 All ER 563, CA. See also *Jameel v Wall Street Journal Europe SPRL* [2005] EWCv Civ 74, [2005] QB 904, [2005] 4 All ER 356 (foreign corporation did not need to show special damage where its trading reputation within the jurisdiction was damaged by the libel).

9 *South Hetton Coal Co v North-Eastern News Association* [1894] 1 QB 133, CA; *Metropolitan Saloon Omnibus Co Ltd v Hawkins* (1859) 4 H & N 87 (corporation entitled to maintain action for libel imputing insolvency); *Slazengers Ltd v C Gibbs & Co* (1916) 33 TLR 35 (held defamatory of the plaintiff company to describe it as a German firm and so likely to be closed down).

10 *Derbyshire County Council v Times Newspapers Ltd* [1993] AC 534, [1993] 1 All ER 1011, HL (overruling *Bognor Regis UDC v Campion* [1972] 2 QB 169, [1972] 2 All ER 61). Such an action would be contrary to the public interest: *Derbyshire County Council v Times Newspapers Ltd* supra.

11 See *Goldsmith v Bhoyrul* [1997] 4 All ER 268.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(7) CRIMINAL LIABILITY/1280. Liability.

(7) CRIMINAL LIABILITY

1280. Liability.

A corporation may not be found guilty of criminal offences, such as treason¹ or murder, for which imprisonment is the only penalty, nor may it be indicted for offences which cannot be vicariously committed, such as perjury² or bigamy³. Subject to these exceptions, a corporation may be indicted and convicted for the criminal acts of the directors and managers who

represent the directing mind and will of the corporation and control what it does⁴. The acts and state of mind of such persons are, in law, the acts and state of mind of the corporation itself⁵. Attribution of liability based on a directing mind and will remains the sole basis in common law for corporate liability for gross negligence manslaughter⁶. A corporation may not be convicted for the criminal acts of its inferior employees or agents unless the offence is one for which an employer or principal may be vicariously liable⁷.

Wherever a duty is imposed by statute in such a way that a breach of the duty amounts to a disobedience of the law, then, if there is nothing in the statute either expressly or impliedly to the contrary, a breach of the statute is an offence for which a corporation may be indicted, whether or not the statute refers in terms to corporations⁸.

Certain statutes provide that, where a corporation has committed an offence, its officers are in certain circumstances to be deemed guilty of that offence⁹.

1 See *Sutton's Hospital Case* (1612) 10 Co Rep 1a, 23a at 32b, Ex Ch. As regards treasonable offences which were converted into felonies by the Treason Felony Act 1848, power to impose a fine was introduced by virtue of the Powers of Criminal Courts Act 1973 s 30(1) (repealed); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 139.

2 See *Wych v Meal* (1734) 3 P Wms 310.

3 *DPP v Kent and Sussex Contractors Ltd* [1944] KB 146, [1944] 1 All ER 119, DC; *R v ICR Haulage Ltd* [1944] KB 551, [1944] 1 All ER 691, CCA. See also *Pharmaceutical Society v London and Provincial Supply Association* (1880) 5 App Cas 857 at 869, HL, per Lord Blackburn; *Whitfield v South Eastern Rly Co* (1858) EB & E 115 at 121 per Lord Campbell. In *R v Birmingham and Gloucester Rly Co* (1842) 3 QB 223 at 232, it was stated by Patterson J, citing Hawk PC, Book 1 c 66 s 13, that a corporation could not be indicted for a felony or for crimes involving personal violence, eg riots or assaults, but this must be read subject to the principles stated in the text; and see note 1 supra. See further CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 38.

4 *DPP v Kent and Sussex Contractors Ltd* [1944] KB 146, [1944] 1 All ER 119, DC; *R v ICR Haulage Ltd* [1944] KB 551, [1944] 1 All ER 691, CCA; *Tesco Supermarkets Ltd v Natrass* [1972] AC 153, [1971] 2 All ER 127, HL. As to the directing mind of a company see further COMPANIES vol 14 (2009) PARA 312.

5 *Lennard's Carrying Co Ltd v Asiatic Petroleum Co Ltd* [1915] AC 705 at 713-714, HL, per Viscount Haldane LC; *HL Bolton (Engineering) Co Ltd v TJ Graham & Sons Ltd* [1957] 1 QB 159 at 172, [1956] 3 All ER 624 at 630, CA, per Denning LJ; *Tesco Supermarkets Ltd v Natrass* [1972] AC 153, [1971] 2 All ER 127, HL. Hence the sole responsible officer of a company cannot be convicted of conspiring with the company: *R v McDonnell* [1966] 1 QB 233, [1966] 1 All ER 193.

6 *A-G's Reference (No 2 of 1999)* [2000] QB 796, [2000] 3 All ER 182, CA.

7 *John Henshall (Quarries) Ltd v Harvey* [1965] 2 QB 233, [1965] 1 All ER 725, DC; *Tesco Supermarkets Ltd v Natrass* [1972] AC 153, [1971] 2 All ER 127, HL; *R v Andrews Weatherfoil Ltd* [1972] 1 All ER 65, [1972] 1 WLR 118, CA.

8 *R v Tyler and International Commercial Co* [1891] 2 QB 588 at 592-593, CA, per Bowen LJ. In the construction of any enactment, relating to an offence punishable on indictment or on summary conviction, the expression 'person', unless the contrary intention appears, includes a body corporate: see the Interpretation Act 1978 ss 5, 22, Sch 1, Sch 2 para 4(5); paras 1225-1226 ante; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 38; STATUTES vol 44(1) (Reissue) PARA 1382.

The liability of corporations under penal statutes is exemplified by the following cases: *St Helens Tramways Co v Wood* (1891) 56 JP 71, DC (local tramways Act); *Provincial Motor Cab Co Ltd v Dunning* [1909] 2 KB 599 (vehicle lighting); *Chuter v Freeth and Pocock Ltd* [1911] 2 KB 832, DC (food and drugs legislation); *R v Ascanio Puck & Co and Paice* (1912) 76 JP 487 (public health legislation); *R v Gainsford Justices* (1913) 29 TLR 359 (factory legislation); *Evans & Co Ltd v LCC* [1914] 3 KB 315 (shops legislation); *Mousell Bros Ltd v London and North Western Rly Co* [1917] 2 KB 836 (railway legislation); *Orpen v Haymarket Capitol Ltd* (1931) 145 LT 614; *Houghton-Le Touzel v Mecca Ltd* [1950] 2 KB 612, [1950] 1 All ER 638 (Sunday observance).

9 See eg the Official Secrets Act 1920 s 8(5); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 505.

UPDATE

1280 Liability

TEXT AND NOTE 6--The common law offence of manslaughter by gross negligence is abolished in its application to corporations, and in any application it has to other organisations to which the Corporate Manslaughter and Corporate Homicide Act 2007 s 1 applies: s 20. As to corporate manslaughter see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 38A.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(7) CRIMINAL LIABILITY/1281. Procedure.

1281. Procedure.

The procedure by which a corporation may be committed for trial, and other special provisions relating to a corporation charged with an offence¹, are considered elsewhere in this work².

1 See eg the Magistrates' Courts Act 1980 s 46, Sch 3 (as amended); and *R v H Sherman Ltd* [1949] 2 KB 674, [1949] 2 All ER 207, CCA (distinguished in *R v Nelson Group Services (Maintenance) Ltd* [1998] 4 All ER 331, [1999] 1 WLR 1526, CA). As to recognisances on case stated see PARA 1286 post.

2 See CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARAS 1161, 1281; MAGISTRATES vol 29(2) (Reissue) PARA 666.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(8) LIABILITY TO TAX/1282. Corporation tax and capital gains tax.

(8) LIABILITY TO TAX

1282. Corporation tax and capital gains tax.

A corporation aggregate¹ is chargeable to corporation tax on its profits and chargeable gains². Local authorities and health service bodies are, however, exempt from corporation tax and capital gains tax³. Corporations established for charitable purposes are exempt from corporation tax and capital gains tax to a considerable extent⁴ and there are certain other statutory exemptions⁵. The Crown, being exempt from taxation generally, is not chargeable to corporation tax or capital gains tax⁶.

1 For the meaning of 'corporation aggregate' see PARA 1109 ante.

2 See the Income and Corporation Taxes Act 1988 ss 6, 8 (both as amended) (see INCOME TAXATION vol 23(1) (Reissue) PARAS 6, 835); and the Taxation of Chargeable Gains Act 1992 s 8 (see CAPITAL GAINS TAXATION vol 5(1) (2004 Reissue) PARA 169). As to the computation of profits for this purpose see INCOME TAXATION vol 23(1) (Reissue) PARA 846 et seq; and as to chargeable gains of corporations see CAPITAL GAINS TAXATION vol 5(1) (2004 Reissue) PARA 285 et seq.

As to the special provisions relating to taxation of close companies, ie companies under the control of five or fewer participators, or of participators who are directors see Pt XI (ss 414-422) (as amended); and INCOME TAXATION vol 23(2) (Reissue) PARA 1296 et seq. As to the special provisions relating to particular kinds of corporation and quasi corporation (eg insurance companies, friendly societies, trade unions, industrial and provident societies, building societies and certain statutory bodies) see Pt XII (ss 431-519A) (as amended); and INCOME TAXATION vol 23(2) (Reissue) PARA 1352 et seq.

3 See *ibid* s 519 (as amended), s 519A (as added and amended); and INCOME TAXATION vol 23(2) (Reissue) PARAS 1215, 1220. See also the Taxation of Chargeable Gains Act 1992 s 271(3); and CAPITAL GAINS TAXATION vol 5(1) (2004 Reissue) PARA 285.

4 See the Income and Corporation Taxes Act 1988 s 505 (as amended), s 506; and INCOME TAXATION vol 23(2) (Reissue) PARA 1177 et seq. Sections 505, 506 in effect exempt all income of a charity, whether corporate or not, applied to charitable purposes, other than income of a trade carried on by the charity, not being a trade exercised in the course of carrying out a primary purpose of the charity or mainly carried out by beneficiaries of the charity. For exemption of charities from tax on their capital gains see the Taxation of Chargeable Gains Act 1992 s 256; and CAPITAL GAINS TAXATION vol 5(1) (2004 Reissue) PARA 279. See also CHARITIES vol 8 (2010) PARAS 431-432.

5 See eg the Income and Corporation Taxes Act 1988 s 508 (as amended) (scientific research associations), s 510 (profits of agricultural societies from exhibitions); and INCOME TAXATION vol 23(2) (Reissue) PARAS 1176, 1214.

6 It is been held that in relation to the Crown's immunity from taxation, 'the Crown' includes three classes: (1) the Sovereign personally; (2) Crown servants or agents; and (3) persons who are not Crown servants or agents but are in consimili casu for certain limited purposes: *Bank voor Handel en Scheepvaart NV v Administrator of Hungarian Property* [1954] AC 584 at 629, 35 TC 311 at 357, HL, per Lord Tucker. However, by a voluntary agreement effective from 6 April 1993 the monarch pays certain taxes: see CROWN AND ROYAL FAMILY vol 12(1) (Reissue) PARA 82. As to the exemption of Crown property from taxation see CROWN PROPERTY. As to the theoretical and historical reasons see *Madras Electric Supply Corpn Ltd v Boarland (Inspector of Taxes)* [1955] AC 667, [1955] 1 All ER 753, HL (where the question was considered whether the exemption was based on prerogative or on the principle that the Crown is not bound by an enactment unless expressly named in it or bound by implication); and see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 702; STATUTES vol 44(1) (Reissue) PARA 1321. A corporation carrying on public services is not necessarily entitled to Crown immunity from taxation: *British Broadcasting Corpn v Johns* [1965] Ch 32, [1964] 1 All ER 923, CA.

UPDATE

1282 Corporation tax and capital gains tax

NOTE 2--Income and Corporation Taxes Act 1988 ss 6, 8 now Corporation Tax Act 2009 ss 2-8.

NOTES 3, 4--Income and Corporation Taxes Act 1988 ss 505, 506, 519 replaced by provisions of the Income Tax Act 2007. For destination of replaced provisions see INCOME TAXATION vol 23(2) (Reissue) PARA 1900D.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(8) LIABILITY TO TAX/1283. Inheritance tax.

1283. Inheritance tax.

A person is not treated for the purposes of inheritance tax as beneficially entitled to property to which he is entitled as a corporation sole¹; and such property is not, therefore, liable to inheritance tax on his death or his ceasing to hold office. A close company² which makes a transfer of value³ will be liable for inheritance tax⁴. A corporation will also be liable for inheritance tax if an individual makes a transfer of value to the corporation⁵ and the tax is not paid by any other person also liable for the tax⁶. If a transfer of value is made to a charitable corporation or certain other bodies, it or they will, however, normally be exempt from inheritance tax⁷. Corporations which are acting as personal representatives or trustees of a settlement will be liable in that capacity for inheritance tax payable out of the estate or, as the case may be, settlement⁸.

- 1 Inheritance Tax Act 1984 s 271; and see INHERITANCE TAXATION vol 24 (Reissue) PARA 410. For the meaning of 'corporation sole' see PARA 1111 ante.
- 2 For the meaning of 'close company' see INHERITANCE TAXATION vol 24 (Reissue) PARA 433.
- 3 For the meaning of 'transfer of value' see INHERITANCE TAXATION vol 24 (Reissue) PARA 409.
- 4 See the Inheritance Tax Act 1984 ss 99(1), (2), 202; and INHERITANCE TAXATION vol 24 (Reissue) PARA 649.
- 5 See ibid ss 1, 2; and INHERITANCE TAXATION vol 24 (Reissue) PARAS 407-408.
- 6 As to the persons liable to inheritance tax see ibid s 199 (as amended), s 200; and INHERITANCE TAXATION vol 24 (Reissue) PARA 634 et seq. A corporation which becomes beneficially entitled to an interest in possession in settled property may also be liable for inheritance tax: see s 201 (as amended); and INHERITANCE TAXATION vol 24 (Reissue) PARA 648.
- 7 See ibid s 23 (as amended); and INHERITANCE TAXATION vol 24 (Reissue) PARA 520. See also s 24A (as added and amended) (transfers of value to registered housing associations: see INHERITANCE TAXATION vol 24 (Reissue) PARA 522) and s 25, Sch 3 (as amended) (gifts for national purposes etc: see INHERITANCE TAXATION vol 24 (Reissue) PARA 523).
- 8 See ibid ss 200, 201 (as amended); and INHERITANCE TAXATION vol 24 (Reissue) PARAS 636, 638.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(8) LIABILITY TO TAX/1284. Other taxes and duties.

1284. Other taxes and duties.

The stipends or other emoluments paid to the occupant of a corporation sole¹ are chargeable to income tax. Although a corporation aggregate² is not chargeable to income tax or capital gains tax on its own income or chargeable gains, a corporation will be required to account for income tax at the basic rate on income³ which it receives as a trustee and which has not been paid subject to deduction of tax or with an attached tax credit⁴, and will also be accountable for income tax at the additional rate applicable to certain income of discretionary trusts where that rate applies⁵. A corporation will also be chargeable to capital gains tax on chargeable gains which it receives as a trustee⁶. Corporations are, in general, liable to stamp duty⁷, VAT⁸ and customs and excise duties⁹ in the same manner as an individual.

- 1 For the meaning of 'corporation sole' see PARA 1111 ante.
- 2 For the meaning of 'corporation aggregate' see PARA 1109 ante.
- 3 ie including eg profits of a trade or business carried on by the trustee.
- 4 See the Finance Act 1989 s 151 (as amended); and INCOME TAXATION vol 23(2) (Reissue) PARA 1731.
- 5 See the Income and Corporation Taxes Act 1988 s 686 (as amended); and INCOME TAXATION vol 23(2) (Reissue) PARA 1566.
- 6 See the Taxation of Chargeable Gains Act 1992 s 69(1), (2); and CAPITAL GAINS TAXATION vol 5(1) (2004 Reissue) PARA 118.
- 7 See STAMP DUTIES AND STAMP DUTY RESERVE TAX vol 44(1) (Reissue) PARA 1001 et seq. As to documents exempt from stamp duty in the winding up of a company see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARA 746; and as to relief from stamp duty on the reconstruction or amalgamation of a company or on transfers between associated companies see STAMP DUTIES AND STAMP DUTY RESERVE TAX vol 44(1) (Reissue) PARA 1091.
- 8 See generally VALUE ADDED TAX.
- 9 See generally CUSTOMS AND EXCISE.

UPDATE**1284 Other taxes and duties**

NOTE 5--Income and Corporation Taxes Act 1988 s 686 replaced by provisions of the Income Tax Act 2007. For destination of replaced provisions see INCOME TAXATION vol 23(2) (Reissue) PARA 1900D.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(8) LIABILITY TO TAX/1285. Non-domestic rating.

1285. Non-domestic rating.

Subject to certain exemptions¹, corporations are liable to be assessed to rates in respect of non-domestic hereditaments occupied by them².

1 See the Local Government Finance Act 1988 s 51, Sch 5 (as amended); and RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 43 et seq.

2 See ibid Pt III (ss 41-67) (as amended); and RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 3 et seq. As to the reduction of rates where the ratepayer is a charity or trustee for a charity and the hereditament is used wholly or mainly for charitable purposes see s 43(5), (6) (as amended); and CHARITIES vol 8 (2010) PARA 424 et seq.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(9) LEGAL PROCEEDINGS/(i) In general/1286. Capacity to sue.

(9) LEGAL PROCEEDINGS**(i) In general****1286. Capacity to sue.**

Any corporation may institute legal proceedings¹. A corporation sole must sue in respect of matters pertaining to the corporation in his corporate capacity, or at least show clearly that he sues in his corporate capacity². A corporation aggregate must sue in its corporate name³, unless it is specially authorised by statute to sue in some other name, as, for example, the name of one of its officers⁴. A corporation may, by its duly authorised agent⁵, enter into a recognisance⁶ to prosecute an appeal by way of case stated in proceedings before a magistrates' court⁷.

The court may make an order for security for costs⁸ if it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order, and the claimant is a company or other body (whether incorporated inside or outside Great Britain) and there is reason to believe that it will be unable to pay the defendant's costs if ordered to do so⁹.

A foreign corporation may sue in an English court¹⁰, but may be ordered to give security for costs¹¹.

A suit by or against a corporation aggregate will not be affected by the death of one of its members¹².

- 1 1 Roll Abr 513. See also eg *Minister of Works and Planning v Henderson* [1947] KB 91 at 93 (incorporation of minister of state conferred right to sue and be sued before the Crown Proceedings Act 1947).
- 2 Grant, Law of Corporations 635. For the meaning of 'corporation sole' see PARA 1111 ante. An authorised government department may institute civil proceedings in its own name: see the Crown Proceedings Act 1947 s 17(2); and CROWN PROCEEDINGS AND CROWN PRACTICE vol 12(1) (Reissue) PARA 119.
- 3 See PARAS 1116, 1118 ante. For the meaning of 'corporation aggregate' see PARA 1109 ante.
- 4 See *R v St Katharine Dock Co* (1832) 1 Nev & MKB 121.
- 5 See *Southern Counties Deposit Bank Ltd v Boaler* (1895) 73 LT 155 (director not authorised); *Leyton UDC v Wilkinson* [1927] 1 KB 853, CA (clerk authorised by virtue of statute).
- 6 See in accordance with the Magistrates' Courts Act 1980 s 114: see MAGISTRATES vol 29(2) (Reissue) PARA 889.
- 7 *Leyton UDC v Wilkinson* [1927] 1 KB 853, CA.
- 8 See under CPR 25.12: see CIVIL PROCEDURE vol 11 (2009) PARA 745 et seq.
- 9 CPR 25.13(1), (2)(c). As to security for costs in respect of a limited company regulated by the Companies Act 1985 see s 726.
- 10 See COMPANIES vol 15 (2009) PARA 1838 et seq; CONFLICT OF LAWS vol 8(3) (Reissue) PARA 465. See also *Bumper Development Corp Ltd v Metropolitan Police Comr (Union of India, claimants)* [1991] 4 All ER 638, [1991] 1 WLR 1362, CA (where the custodian of a temple having legal personality under the law of Tamil Nadu was held to be empowered to take all necessary steps on its behalf).
- 11 See CPR 25.13; and CIVIL PROCEDURE vol 11 (2009) PARA 746. See also COMPANIES vol 15 (2009) PARA 1840. Security for costs may be ordered against a corporation ordinarily resident in another member state of the European Community only in circumstances where security would be ordered against a company ordinarily resident within the jurisdiction: *Fitzgerald v Williams* [1996] QB 657, [1996] 2 All ER 171, CA; *Chequepoint SARL v McClelland* [1997] QB 51, [1997] 2 All ER 384, CA.
- 12 *Blackburn v Jepson* (1823) 3 Swan 132 at 138.

UPDATE

1286 Capacity to sue

NOTE 9--Companies Act 1985 s 726 repealed: Companies Act 2006 Sch 16.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(9) LEGAL PROCEEDINGS/(i) In general/1287. Capacity to be sued.

1287. Capacity to be sued.

A corporation may, as a general rule, be sued as though it were an individual¹. Thus it may be sued on implied contracts, as, for example, for money had and received², use and occupation of land³, or tenancy from year to year⁴.

Where a corporation has covenanted to make a payment out of its corporate funds only, a claim on the covenant will lie against the corporation whether it has funds or not, and it is not necessary to allege in the statements of case that corporate funds exist⁵.

A corporation aggregate should be sued in its corporate name⁶, unless it is specially authorised by statute to be sued in some other name⁷.

A foreign corporation may be sued in an English court⁸.

1 1 Roll Abr 513. Special rules apply in proceedings to which a government department is a party: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 381; CROWN PROCEEDINGS AND CROWN PRACTICE vol 12(1) (Reissue) PARA 101 et seq.

2 *Hall v Swansea Corpn* (1844) 5 QB 526; *Jefferys v Gurr* (1831) 2 B & Ad 833; and see CONTRACT vol 9(1) (Reissue) PARA 778 et seq.

3 *Finlay v Bristol and Exeter Rly Co* (1852) 7 Exch 409; *Lowe v London and North Western Rly Co* (1852) 18 QB 632.

4 *Doe d Pennington v Tanriere* (1848) 12 QB 998.

5 *Sunderland Marine Insurance Co v Kearney* (1851) 16 QB 925.

6 As to the corporate name see PARA 1116 ante. For the meaning of 'corporation aggregate' see PARA 1109 ante.

7 *R v St Katharine Dock Co* (1832) 1 Nev & MKB 121.

8 See COMPANIES vol 15 (2009) PARA 1838 et seq; CONFLICT OF LAWS vol 8(3) (Reissue) PARA 465.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(9) LEGAL PROCEEDINGS/(i) In general/1288. Representation of a body corporate.

1288. Representation of a body corporate.

A company or other corporation may be represented at trial by an employee if the employee has been authorised by the company or corporation to appear at trial on its behalf, and the court gives permission¹. A company or other corporation which is acting without a legal representative is a litigant in person². A body corporate which has power under statute to appoint an agent may institute proceedings in a county court by an agent who is not a solicitor³.

1 CPR 39.6; and see CIVIL PROCEDURE vol 12 (2009) PARA 1126. In an appropriate case a director may be allowed to become a party to litigation in which the company of which he is a director is defendant in order to make an application in that litigation in relation to orders which have been made against that corporate defendant: *Arbuthnot Leasing International Ltd v Havelet Leasing Ltd* [1991] 1 All ER 591, sub nom *ALI Finance Ltd v Havelet Leasing Ltd* [1992] 1 WLR 455.

2 CPR 48.6(6); and see CIVIL PROCEDURE vol 11 (2009) PARA 573.

3 *Charles P Kinnell & Co Ltd v Harding, Wace & Co* [1918] 1 KB 405, CA. A local authority may arrange for the issue of legal proceedings to be taken in its name by its officials: *R v Southwark London Borough Council, ex p Bannerman* [1990] RVR 33.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(9) LEGAL PROCEEDINGS/(i) In general/1289. Administration of estates of deceased persons.

1289. Administration of estates of deceased persons.

A corporation sole may take a grant of probate of a will¹.

The court may grant probate or administration to a trust corporation² either solely or jointly with another person, and the corporation may act accordingly as executor or administrator, as the case may be³. Probate or administration must not be granted to any person as nominee of a trust corporation⁴.

Any officer authorised for the purpose by a trust corporation or by its directors or governing body may, on behalf of the corporation, swear affidavits, give security and do any other act or thing which the court may require with a view to the grant to the corporation of probate or administration; and the acts of an officer so authorised are binding on the corporation⁵.

Probate or letters of administration cannot be granted to a corporation aggregate⁶ which is not a trust corporation; but where such a corporation would, if an individual, be entitled to a grant, administration for its use and benefit, limited until further representation be granted, may be made to its nominee or to its nominee or its lawfully constituted attorney⁷. This does not apply, however, where a corporate body is appointed executor jointly with an individual unless the individual's right has been cleared off⁸.

1 *In the Goods of Haynes* (1842) 3 Curt 75. For the meaning of 'corporation sole' see PARA 1111 ante. The Public Trustee may take probate or letters of administration of the estate of a deceased person either alone or jointly with others: see the Public Trustee Act 1906 ss 2(2), 6 (as amended); the Public Trustee Rules 1912, SR & O 1912/348, r 6(c); and TRUSTS vol 48 (2007 Reissue) PARA 769 et seq. As to the effect of an appointment of a corporation sole to be a personal representative during a vacancy in the office see PARA 1246 ante.

2 For the meaning of 'trust corporation' see TRUSTS vol 48 (2007 Reissue) PARA 798.

3 See the Supreme Court Act 1981 s 115(1); and EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARA 18. Note that the Supreme Court Act 1981 is to be renamed the Senior Courts Act 1981 by the Constitutional Reform Act 2005 s 59(5), Sch 11 para 1 as from a day to be appointed by order under s 148(1). At the date at which this volume states the law, no such day had been appointed.

4 See the Supreme Court Act 1981 s 115(2); and EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARA 18. See note 3 supra.

5 See *ibid* s 115(3); and EXECUTORS AND ADMINISTRATORS vol 17(2) (Reissue) PARA 18. See note 3 supra.

6 For the meaning of 'corporation aggregate' see PARA 1109 ante.

7 Non-Contentious Probate Rules 1987, SI 1987/2024, r 36(4)(a).

8 *Ibid* r 36(4)(d).

UPDATE

1289 Administration of estates of deceased persons

NOTE 3--Appointed day is 1 October 2009: SI 2009/1604.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(9) LEGAL PROCEEDINGS/(i) In general/1290. Insolvency proceedings.

1290. Insolvency proceedings.

A body corporate¹ is not qualified for appointment as receiver of the property of a company²; and an attempt to appoint such a body is a nullity³. Any body corporate which acts as such a receiver is liable on conviction on indictment to a fine, or on summary conviction to a fine not exceeding the statutory maximum⁴.

In individual insolvency proceedings a corporation may be a member of a creditors' committee, but it cannot act as such otherwise than by a duly appointed representative⁵. In corporate insolvency proceedings a corporation may be a member of a liquidator's committee, but it cannot likewise act otherwise than by a duly appointed representative⁶. A representative must hold a letter of authority entitling him to act, either generally or specially, signed by or on behalf of the corporation⁷.

A corporation may vote in the appointment of a trustee in bankruptcy in a creditors' meeting by a person duly authorised by a special power of attorney under its common seal⁸.

1 For these purposes, 'body corporate' does not include a corporation sole, nor a Scottish firm, but includes a company incorporated elsewhere than in Great Britain: Companies Act 1985 s 740; applied by the Insolvency Act 1986 s 251. For the meaning of 'corporation sole' see PARA 1111 ante.

2 Ibid s 30.

3 *Portman Building Society v Gallwey* [1955] 1 All ER 227, [1955] 1 WLR 96.

4 Insolvency Act 1986 ss 30, 430, Sch 10. The 'statutory maximum', with reference to a fine or penalty on summary conviction for an offence, is the prescribed sum within the meaning of the Magistrates' Courts Act 1980 s 32 (as amended): see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 140; MAGISTRATES vol 29(2) (Reissue) PARA 804. The 'prescribed sum' means £5,000 or such sum as is for the time being substituted in this definition by order under the Magistrates' Courts Act 1980 s 143(1) (as substituted): see s 32(9) (amended by the Criminal Justice Act 1991 s 17(2)); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 141.

5 See the Insolvency Rules 1986, SI 1986/1925, r 6.150(3); and BANKRUPTCY AND INSOLVENCY vol 3(2) (2002 Reissue) PARA 329.

6 See *ibid* r 4.152(5); and COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARAS 630, 995.

7 See *ibid* r 6.156(2) (as amended) (individual insolvency: see BANKRUPTCY AND INSOLVENCY vol 3(2) (2002 Reissue) PARA 335); and r 4.159(2) (as amended) (corporate insolvency: see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARA 636).

8 *Re Stephens, ex p Bank of England* (1818) 1 Swan 10; and see BANKRUPTCY AND INSOLVENCY vol 3(2) (2002 Reissue) PARAS 329, 335. As to alternatives to the use of a common seal see PARA 1263 ante.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(9) LEGAL PROCEEDINGS/(i) In general/1291. Proceedings by members.

1291. Proceedings by members.

Where it is competent for a corporation as such to commence legal proceedings, such proceedings cannot be commenced by one or more of its individual members¹. So long as they have it in their power to bring a claim in the name of the corporation, a claim by such individual members in their proper names for the same purpose cannot be maintained, whether the subject matter of the claim is a transaction which is merely voidable at the discretion of a majority of the members, or one which is absolutely illegal, or incapable of ratification by such a majority². If the governing body of the corporation refuses to allow proceedings to be instituted in its name, the individual members may, at their own risk³, make use of its name as

claimant, provided that the matter is urgent⁴. Where a company, other incorporated body or trade union is alleged to be entitled to claim a remedy, a derivative claim may be made by one or more members of the company, body or trade union for it to be given that remedy⁵.

It is competent⁶ for an individual member⁷, suing either on his own behalf alone⁸ or on behalf of himself and all other members of the corporation⁹, to sue the corporation or its officers¹⁰ to prevent the corporation from either commencing or continuing the doing of something which is beyond its powers¹¹. An individual member may sue on behalf of himself and all other members not made defendants to the claim to prevent the corporation from carrying out something which purports to be a corporate act, but which is in fact an attempt by the majority of its members to practise fraud¹² or oppression¹³ against the minority, or to restrain an act which, though not ultra vires, is inconsistent with the constitution of the corporation¹⁴, or possibly to restrain acts of misfeasance not amounting to fraud¹⁵.

1 *Foss v Harbottle* (1843) 2 Hare 461 at 490 per Wigram V-C; and see *Mozley v Alston* (1847) 1 Ph 790 at 800; *Gray v Lewis* (1873) 8 Ch App 1035 at 1050 per James LJ; *Burland v Earle* [1902] AC 83 at 93, PC; *Normandy v Ind, Coope & Co Ltd* [1908] 1 Ch 84; *Pavlides v Jensen* [1956] Ch 565, [1956] 2 All ER 518; cf *Walker v Warden and Fellows of Christ's College, Manchester* (1827) 1 Bli NS 9, HL; *Towers v African Tug Co* [1904] 1 Ch 558, CA. See also COMPANIES vol 14 (2009) PARA 462. As to the application of the rule to trade unions see *Cotter v National Union of Seamen* [1929] 2 Ch 58, CA; *Hodgson v National and Local Government Officers Association* [1972] 1 All ER 15, [1972] 1 WLR 130; and EMPLOYMENT vol 40 (2009) PARA 868.

2 *Mozley v Alston* (1847) 1 Ph 790. The doctrine laid down in *Foss v Harbottle* (1843) 2 Hare 461 and *Mozley v Alston* supra was approved in *Lord v Governor & Co of Copper Miners* (1848) 2 Ph 740.

3 *Newbiggin-by-the-Sea Gas Co v Armstrong* (1879) 13 ChD 310, CA; but see COMPANIES vol 14 (2009) PARA 463.

4 *MacDougall v Gardiner* (1875) 1 ChD 13, CA.

5 See CPR 19.9; and CIVIL PROCEDURE vol 11 (2009) PARA 232. See also *Konamaneni v Rolls Royce Industrial Power (India) Ltd* [2002] 1 All ER 979, [2002] 1 WLR 1269 (English courts have jurisdiction to hear a derivative claim in relation to a foreign company). As to the instances when derivative proceedings may be brought see COMPANIES vol 14 (2009) PARAS 462-463.

6 See COMPANIES vol 14 (2009) PARAS 462,, 464.

7 His motives are immaterial: *Colman v Eastern Counties Rly Co* (1846) 10 Beav 1; *Seaton v Grant* (1867) 2 Ch App 459; *Bloxam v Metropolitan Rly Co* (1868) 3 Ch App 337.

8 *Simpson v Westminster Palace Hotel Co* (1860) 8 HL Cas 712; *Hoole v Great Western Rly Co* (1867) 3 Ch App 262.

9 *Forrest v Manchester, Sheffield and Lincolnshire Rly Co* (1861) 4 De GF & J 126; *Robson v Dodds* (1869) LR 8 Eq 301.

10 The corporation must be made a defendant: *Bagshaw v Eastern Union Rly Co* (1849) 7 Hare 114 at 131; affd (1850) 2 Mac & G 389.

11 *Colman v Eastern Counties Rly Co* (1846) 10 Beav 1; *Tomkinson v South-Eastern Rly Co* (1887) 35 ChD 675; *Clinch v Financial Corp'n* (1868) 4 Ch App 117; *Jenkin v Pharmaceutical Society of Great Britain* [1921] 1 Ch 392; *Pharmaceutical Society of Great Britain v Dickson* [1970] AC 403, [1968] 2 All ER 686, HL; and see *Russell v Wakefield Waterworks Co* (1875) LR 20 Eq 474.

12 *Menier v Hooper's Telegraph Works* (1874) 9 Ch App 350; *Spokes v Grosvenor Hotel Co* [1897] 2 QB 124, CA; *Burland v Earle* [1902] AC 83, PC; *Atwool v Merryweather* (1867) LR 5 Eq 464n; *Baillie v Oriental Telephone and Electric Co Ltd* [1915] 1 Ch 503, CA.

13 *Alexander v Automatic Telephone Co* [1900] 2 Ch 56 at 69, CA, per Lindley MR. See also PARAS 1208, 1210 ante.

14 *Salmon v Quin and Axtens Ltd* [1909] 1 Ch 311, CA (affd sub nom *Quin and Axtens Ltd v Salmon* [1909] AC 442, HL); *Cotter v National Union of Seamen* [1929] 2 Ch 58, CA; *Edwards v Halliwell* [1950] 2 All ER 1064, CA.

15 See *Heyting v Dupont* [1964] 2 All ER 273, [1964] 1 WLR 843, CA.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(9) LEGAL PROCEEDINGS/(ii) Procedure/1292. Service of the claim form.

(ii) Procedure

1292. Service of the claim form.

A claim form issued by a corporation should state the address of the corporation as that of its head office¹.

A claim form may be served on a corporation by any of the following methods:

- 29 (1) personal service²;
- 30 (2) first class post³;
- 31 (3) leaving the document at the place specified as the address for service⁴;
- 32 (4) through a document exchange⁵;
- 33 (5) fax or other means of electronic communication⁶; or
- 34 (6) an alternative method permitted by order of the court⁷.

A claim form is served personally on a company or other corporation by leaving it with a person holding a senior position within the company or corporation⁸. Each of the following persons is a person holding a senior position: (a) in respect of a registered company or corporation, a director, the treasurer, secretary, chief executive, manager or other officer of the company or corporation; and (b) in respect of a corporation which is not a registered company, in addition to those persons set out in head (a) above, the mayor, chairman, president, town clerk or similar officer of the corporation⁹.

Where no solicitor is acting for the corporation to be served and it has not given an address for service, the claim form must be sent or transmitted to, or left at, the following places¹⁰. In the case of a corporation incorporated in England and Wales which is not a company, the claim form must go to the principal office of the corporation or any place within the jurisdiction where the corporation carries on its activities and which has a real connection with the claim¹¹. In the case of a company registered in England and Wales, the claim form must go to the principal office of the company or any place of business of the company within the jurisdiction which has a real connection with the claim¹². In the case of any other company or corporation, the claim form must go to any place within the jurisdiction where the corporation carries on its activities or any place of business of the company within the jurisdiction¹³.

A company may be served by any of the methods listed in heads (1) to (6) above as an alternative to the statutory methods of service set out in the Companies Act 1985¹⁴. A document may be served on a company by leaving it at, or sending it by post to, the company's registered office¹⁵. Where a company registered in Scotland carries on business in England and Wales, the process of any court in England and Wales may be served on the company by leaving it at, or sending it by post to, the company's principal place of business in England and Wales, addressed to the manager or other head officer in England and Wales of the company¹⁶. Where process is so served on a company, the person issuing out the process must send a copy of it by post to the company's registered office¹⁷.

Any process or notice required to be served on a limited company which is incorporated outside the United Kingdom and Gibraltar and has a branch in Great Britain¹⁸ in respect of the carrying

on of the business¹⁹ of a branch registered by it is sufficiently served if addressed to any person whose name has, in respect of the branch, been delivered to the registrar of companies as a person authorised to accept service of process and any notices to be served on the company in respect of the business or branch, and left at or sent by post to the address for that person which has been so delivered²⁰. Where, however, such a company makes default, in respect of a branch, in delivering to the registrar the required particulars, or all the persons whose names have, in respect of a branch, been delivered to the registrar as persons authorised to accept service of process and of any notices to be served on the company in respect of the business of the branch are dead or have ceased to reside in Great Britain, or refuse to accept service on the company's behalf, or for any reason cannot be served, a document may be served on the company in respect of the carrying on of the business of the branch by leaving it at, or sending it by post to, any place of business established by the company in Great Britain²¹. Where such a company has more than one branch in Great Britain, any notice or process required to be served on the company which is not required to be served in respect of the carrying on of the business of one branch rather than another is treated for these purposes as required to be served in respect of the carrying on of the business of each of its branches²².

Any process or notice required to be served on an overseas company²³, other than a limited company which is incorporated outside the United Kingdom and Gibraltar and has a branch in the United Kingdom, is sufficiently served if addressed to any person whose name has been delivered to the registrar of companies as authorised to accept service and left at or sent by post to the address which has been so delivered²⁴. Where, however, such a company has made default in delivering to the registrar the name and address of a person resident in Great Britain who is authorised to accept on behalf of the company service of process or notices, or if at any time all the persons whose names and addresses have been so delivered are dead or have ceased so to reside or refuse to accept service on the company's behalf, or for any reason cannot be served, a document may be served on the company by leaving it at, or sending it by post to, any place of business established by the company in Great Britain²⁵.

A corporation not otherwise liable to service within the jurisdiction may be served within the jurisdiction if it has agreed to appoint a particular person within the jurisdiction to accept service²⁶.

Where the defendant corporation is overseas and the court is satisfied that the contract to which the claim relates was entered into within the jurisdiction with or through the defendant's agent, and at the time of the application either the agent's authority has not been terminated or he is still in business relations with his principal, the court may permit a claim form relating to a contract to be served on the defendant's agent²⁷.

1 *Le Tailleur v South Eastern Rly Co* (1877) 3 CPD 18. In the case of a registered company, the address is the registered office: see the Companies Act 1985 s 287(1) (as substituted), s 725(1), s 735(1).

2 CPR 6.2(1)(a). As to personal service see CPR 6.4; the text to notes 8-9 *infra*; and CIVIL PROCEDURE vol 11 (2009) PARA 142.

3 CPR 6.2(1)(b).

4 CPR 6.2(1)(c). The corporation must give an address for service within the jurisdiction: see CPR 6.5(2). See also the text and notes 10-13 *infra*.

5 CPR 6.2(1)(d).

6 CPR 6.2(1)(e).

7 See CPR 6.8; and CIVIL PROCEDURE vol 11 (2009) PARA 152.

8 CPR 6.4(4).

9 *Practice Direction-Service* PD 6 para 6.2.

- 10 CPR 6.5(6).
- 11 CPR 6.5(6) Table.
- 12 CPR 6.5(6) Table.
- 13 CPR 6.5(6) Table.
- 14 CPR 6.2(2). The statutory methods of service are those contained in the Companies Act 1985 s 694A (as added), s 695 (as amended), s 725: see the text and notes 15-25 infra.
- 15 See *ibid* s 725(1).
- 16 See *ibid* s 725(2).
- 17 See *ibid* s 725(3).
- 18 See *ibid* s 690A(1) (s 690A added by the Oversea Companies and Credit and Financial Institutions (Branch Disclosure) Regulations 1992, SI 1992/3179, reg 3(1), Sch 2 para 2).
- 19 As to the circumstances in which a company is regarded as having a place of business in Great Britain see CONFLICT OF LAWS vol 8(3) (Reissue) PARA 472.
- 20 See the Companies Act 1985 s 694A(1), (2) (s 694A added by the Oversea Companies and Credit and Financial Institutions (Branch Disclosure) Regulations 1992, SI 1992/3179, Sch 2 para 8).
- 21 See the Companies Act 1985 s 694A(1), (3) (as added: see note 20 *supra*).
- 22 See *ibid* s 694A(1), (4) (as added: see note 20 *supra*).
- 23 Ie a company to which *ibid* s 691 (as amended) applies.
- 24 See *ibid* s 695(1) (amended by the Oversea Companies and Credit and Financial Institutions (Branch Disclosure) Regulations 1992, SI 1992/3179, Sch 2 para 9).
- 25 Companies Act 1985 s 695(2).
- 26 *Montgomery Jones & Co v Liebenthal & Co* [1898] 1 QB 487, CA. The agreement will stand even though the corporation becomes insolvent: *British Wagon Co Ltd v Gray* [1896] 1 QB 35 at 37, CA.
- 27 CPR 6.16; and see CIVIL PROCEDURE vol 11 (2009) PARA 147.

UPDATE

1292 Service of the claim form

TEXT AND NOTES--CPR Pt 6 substituted: SI 2008/2178.

NOTE 1--Companies Act 1985 ss 287(1), 725(1), 735(1) replaced by Companies Act 2006 ss 1(1) (see COMPANIES vol 14 (2009) PARA 24), 86 (see COMPANIES vol 14 (2009) PARA 129), 1139(1) (see COMPANIES vol 14 (2009) PARA 671).

TEXT AND NOTES 14-17, 20-25--Companies Act 1985 ss 695, 725 replaced by Companies Act 2006 s 1139: see COMPANIES vol 14 (2009) PARA 671; COMPANIES vol 15 (2009) PARA 1836. Companies Act 1985 ss 691, 694A repealed: Companies Act 2006 Sch 16.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(9) LEGAL PROCEEDINGS/(ii) Procedure/1293. Enforcing judgment; contempt of court.

1293. Enforcing judgment; contempt of court.

A judgment against a corporation may be enforced by any of the usual methods of execution¹, and its property is not protected merely by the fact that it is held for public purposes². If a corporation disobeys a judgment or order of the court requiring it to abstain from doing an act, or, being required by a judgment or order to do an act within a specified time, refuses or neglects to do it within that time, its property is liable to sequestration, as is also the property of its directors or other officers³. The directors or officers are also liable to be committed⁴.

No writ of sequestration may be issued against the property of an officer of a corporation and no order of committal may be made against an officer of a corporation unless a copy of the order requiring the corporation to do or abstain from doing an act has been served personally on the officer⁵.

An officer of a corporation is not liable in contempt by virtue merely of his office and his knowledge that the order sought to be enforced was made; he must be shown to be in contempt under the general law of contempt⁶. The failure of an officer to supervise or investigate compliance with the order may amount to contempt⁷. A corporation may be liable in contempt for deliberate disobedience by an employee to an order of the court, even if the employee has been acting in breach of express instructions⁸.

A judgment may also be enforced by a mandatory order against the corporation if the satisfaction of the judgment requires the performance of a public duty (such as the levying of a rate)⁹, and in some cases, by execution against its members¹⁰. Although the court cannot make an order for committal¹¹ against a corporation guilty of criminal contempt of court, it may instead impose an appropriate fine¹².

1 As to enforcement generally see CIVIL PROCEDURE vol 12 (2009) PARA 1224 et seq.

2 *Arnold v Gravesend Corpn* (1856) 25 LJ Ch 530; *A-G v Wilkinson* (1859) 29 LJ Ch 41; *Spokes v Banbury Board of Health* (1865) LR 1 Eq 42; *Earl of Jersey v Uxbridge Rural Sanitary Authority* [1891] 3 Ch 183; cf *Re Hull, Barnsley and West Riding Junction Rly Co* (1888) 40 ChD 119 at 128, 130, CA.

3 See CPR Sch 1 RSC Ord 45 r 5; and CIVIL PROCEDURE vol 12 (2009) PARAS 1247, 1249; CONTEMPT OF COURT vol 9(1) (Reissue) PARA 458. A county court has jurisdiction to order sequestration of the assets of a corporation to enforce the judgment or order of the court: *Rose v Laskington Ltd* [1990] 1 QB 562, [1989] 3 All ER 306, DC.

4 See CPR Sch 1 RSC Ord 45 r 5. As to the power to enforce the order where service of the order has not been effected or has been dispensed with see CPR Sch 1 RSC Ord 45 r 7(6), (7); and CIVIL PROCEDURE vol 12 (2009) PARA 1249. A director or officer of a corporation is liable to committal proceedings for breach of an undertaking given to the court by the company: *Biba Ltd v Stratford Investments Ltd* [1973] Ch 281, [1972] 3 All ER 1041.

5 See CPR Sch 1 RSC Ord 45 r 7; and CIVIL PROCEDURE vol 12 (2009) PARA 1249; CONTEMPT OF COURT vol 9(1) (Reissue) PARA 467 et seq.

6 *Director General of Fair Trading v Buckland* [1990] 1 All ER 545, [1990] 1 WLR 920.

7 *A-G for Tuvalu v Philatelic Distribution Corpn Ltd* [1990] 2 All ER 216, [1990] 1 WLR 926, CA.

8 *Director General of Fair Trading v Pioneer Concrete (UK) Ltd* [1995] 1 AC 456, sub nom *Re Supply of Ready Mixed Concrete (No 2)*, *Director General of Fair Trading v Pioneer Concrete (UK) Ltd* [1995] 1 All ER 135, HL.

9 *Worthington v Hulton* (1865) LR 1 QB 63; *Wolstanton United Urban Council v Tunstall UDC* [1910] 2 Ch 347 (on appeal [1911] 1 Ch 229, CA); cf *R v Rippon Corpn* (1700) 1 Ld Raym 563. As to mandatory orders generally see JUDICIAL REVIEW vol 61 (2010) PARA 703 et seq.

10 See eg the Companies Clauses Consolidation Act 1845 s 36; and COMPANIES vol 15 (2009) PARAS 1711-1712.

11 *Re Hooley, ex p Hooley* (1899) 79 LT 706.

12 *R v JG Hammond & Co Ltd* [1914] 2 KB 866; and see CONTEMPT OF COURT vol 9(1) (Reissue) PARA 458.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/4. POWERS, DUTIES AND LIABILITIES/(9) LEGAL PROCEEDINGS/(ii) Procedure/1294. Habeas corpus.

1294. Habeas corpus.

A corporation is amenable to process by habeas corpus, but it would seem that the claim form should not issue to the corporation in its corporate name but to the responsible officer of the corporation¹.

¹ *Re Carroll* [1931] 1 KB 317, CA. As to habeas corpus see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 207 et seq.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/5. DISSOLUTION OF CHARTERED CORPORATIONS/1295. Surrender to the Crown.

5. DISSOLUTION OF CHARTERED CORPORATIONS

1295. Surrender to the Crown.

A corporation constituted by royal charter only may surrender its charter to the Crown for the purpose of effecting a dissolution¹; but, unless that purpose is clearly shown, it will not be thereby dissolved².

It is doubtful whether a corporation created by charter can be prevented from seeking to obtain a new or enlarged charter³, although, in one case, an injunction was granted at the instance of a minority of the members to restrain, until the hearing, the surrender of a corporation's charter in exchange for the grant of a new charter⁴.

The terms of the surrender may, however, be such as to effect a dissolution in fact⁵, but, if there remains some purpose for which the corporation may continue to exist, it will remain a corporation⁶.

A corporation is not necessarily dissolved by parting with all its property⁷.

¹ Grant, Law of Corporations 46.

² *R v Grey* (1725) 8 Mod Rep 358.

³ See *Jenkin v Pharmaceutical Society of Great Britain* [1921] 1 Ch 392 at 399 per Peterson J.

⁴ *Ward v Society of Attornies* (1844) 1 Coll 370 (interlocutory injunction).

⁵ *R v Grey* (1725) 8 Mod Rep 358 at 362 per Fortescue J.

⁶ *Dean and Chapter of Norwich's Case* (1598) 3 Co Rep 73a at 74b, 76b.

⁷ *Hayward v Fulcher* (1628) W Jo 166.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/5. DISSOLUTION OF CHARTERED CORPORATIONS/1296. Forfeiture.

1296. Forfeiture.

A corporation created by charter may be dissolved by forfeiture for either misuse or abuse of its powers and privileges; and there is a tacit or implied condition annexed to all grants of incorporation to trading companies that the grant shall not be misused or abused, and that, if it is, the charter or franchise is forfeited¹. The Crown cannot reserve to itself in the charter any power to override or control this rule of law².

If a corporation is established for a particular purpose, and it divests itself of all rights, so that it cannot answer the purpose for which it was instituted, it is dissolved³; and a corporation founded on a trust is forfeited if the trust is broken⁴. The directions given in a charter of incorporation are equivalent to conditions on which it is given; and, where it is alleged that there has been a breach of a condition on which incorporation has been granted, the question may be tried by *scire facias*⁵.

Where a corporation intends to do an act which is not authorised by its constitution, and which, if done, would render it liable to a forfeiture, the court has jurisdiction to prevent the doing of the proposed act⁶.

1 *Eastern Archipelago Co v R* (1853) 2 E & B 856 at 869, Ex Ch, per Martin B.

2 *Eastern Archipelago Co v R* (1853) 2 E & B 856 at 870, Ex Ch, per Martin B.

3 *R v London Corpn* (1692) 12 Mod Rep 17 at 19 per Holt CJ.

4 *R v London Corpn* (1692) 12 Mod Rep 17, as reported sub nom *Smith's Case* (1691) 4 Mod Rep 52 at 58.

5 See PARAS 1230 ante, 1301 post.

6 *Rendall v Crystal Palace Co* (1858) 4 K & J 326; *Jenkin v Pharmaceutical Society of Great Britain* [1921] 1 Ch 392.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/5. DISSOLUTION OF CHARTERED CORPORATIONS/1297. Seizure of liberties.

1297. Seizure of liberties.

If a corporation is guilty of an offence amounting to a forfeiture, the Crown may seize the franchise¹. Generally, the seizure of the liberty of a corporation is not equivalent to the seizure of the corporation itself²; and it has been held that a judgment against a corporation 'that the liberties thereof be seized into the King's hands' did not dissolve the corporation³.

1 *R v Ponsonby* (1755) 1 Ves 1 at 8; affd (1758) 2 Bro Parl Cas 311, HL. As to forfeiture see PARA 1296 ante.

2 *R v London Corpn* (1692) as reported in Holt KB 168 at 169.

3 *R v London Corpn* (1692) 12 Mod Rep 17 at 18 per Holt CJ.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/5. DISSOLUTION OF CHARTERED CORPORATIONS/1298. Revocation of charter.

1298. Revocation of charter.

A charter may be wholly or partially revoked by a subsequent Act of Parliament or by the acceptance of a subsequent charter inconsistent with the original charter¹. The Crown has no power to revoke or alter a charter of incorporation, after it has been validly made and accepted², without the consent of the original grantees or their successors, and not even then if the original grant was made under the authority of, or confirmed by, Parliament³.

Where the Crown has granted a charter with the consent of the Lords and Commons in Parliament assembled, it may be revoked or repealed only by an Act of Parliament⁴.

An express provision in a charter that in case of non-compliance with the conditions on which the charter was granted the Crown may revoke and make void the charter under the Great Seal or sign manual does not exclude every other mode of revocation or annulment⁵.

1 *R v Massory* (1738) Andr 295.

2 *R v Vice-Chancellor of Cambridge* (1765) 3 Burr 1647 at 1656 per Lord Mansfield CJ.

3 Grant, Law of Corporations 10; and see *Gray and Cathcart v Provost etc of Trinity College, Dublin* [1910] 1 IR 370.

4 Grant, Law of Corporations 33.

5 *Eastern Archipelago Co v R* (1853) 2 E & B 856 at 879, Ex Ch, per Williams J (where the judge appeared to think that such a provision would probably be ineffectual inasmuch as the act of the Crown might be reviewed by the courts). As to the Great Seal and sign manual see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 908 et seq.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/5. DISSOLUTION OF CHARTERED CORPORATIONS/1299. Effect of insufficiency of members.

1299. Effect of insufficiency of members.

Where a corporation is unable by reason of the reduction of the number of its members to do what is necessary for the continuance of its existence, or for carrying out the objects for which it was created, it will not be thereby extinguished or dissolved, but only suspended; accordingly, on a grant of a new charter to the dormant body, the revived corporation may sue in respect of rights which had accrued to it before the new grant¹. Where a corporation is unable to act by reason of insufficiency of members, the existing members nevertheless continue to possess their former rights for their lives but without power to perform the duties imposed on them by the constitution². The corporation may, however, continue to exist for certain purposes, such as the holding of property and the payment of creditors³.

1 *Colchester Corpn v Brooke* (1846) 7 QB 339; *Colchester Corpn v Seaber* (1766) 3 Burr 1866.

2 *R v Hughes* (1828) 7 B & C 708 at 717 per Lord Tenterden CJ.

3 *Woodbridge Union Guardians v Colneis Guardians* (1849) 13 QB 269.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/5. DISSOLUTION OF CHARTERED CORPORATIONS/1300. Absence of integral part of corporation.

1300. Absence of integral part of corporation.

Where the charter of a corporation aggregate prescribes a time for the election or appointment of the head of the corporation and contains no provision for the old head continuing in office until a new head is chosen, the corporation will to that extent be dissolved if the head is not chosen by the prescribed time, and it cannot afterwards proceed to an election¹. Thus when an integral part of a corporation is gone², without whose existence the functions of the corporation cannot be exercised, and the corporation has no means of supplying that integral part, the corporation is dissolved, at least for certain purposes, and the Crown may revive all the rights which the corporation had and attach them to a new corporation³. Where offices are vacant and a corporation cannot act for want of power to elect, the corporation is not dissolved, but is in abeyance or dormant, and may be revived by grant of a new charter; and in such a case the revived corporation will succeed to all the rights of the dormant one⁴. Where a corporation has ceased to exist, in the sense that its chief offices have for a number of years been allowed to remain vacant, it need not be made a party to a suit concerning its affairs⁵.

1 *Banbury Corp'n Case* (1716) 10 Mod Rep 346. As to elections see PARAS 1175 et seq, 1217 et seq ante. For the meaning of 'corporation aggregate' see PARA 1109 ante.

2 If a corporation was composed of a brotherhood and a sisterhood and all the sisters were dead, all grants and acts by the brotherhood were void, for, the sisterhood being dead, the corporation was imperfect: 1 Roll Abr 514.

3 Eg the right to sue on a bond given to the old corporation: see *R v Pasmore* (1789) 3 Term Rep 199 at 241-242 (where there had not for a long time been a mayor or alderman so that no nominations or elections could be held, and the general opinion of the judges seems to have been that the corporation was dissolved absolutely).

4 *Colchester Corp'n v Seaber* (1766) 3 Burr 1866. See also *Re Yarm Free Grammar School* (1853) 10 Hare App l p v (where the governors of a school had been incorporated by charter, but had ceased to exist by reason of the omission to fill vacancies as they occurred, a scheme was settled by the Court of Chancery, with the assent of the Crown, for the appointment of trustees of the property belonging to the charity and to enable application for directions to be made from time to time to the judge in chambers, notice being given to the Attorney General).

5 *Daugars v Rivaz* (1860) 28 Beav 233.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/5. DISSOLUTION OF CHARTERED CORPORATIONS/1301. Scire facias.

1301. Scire facias.

A corporation may be dissolved on proceedings on a scire facias instituted on the Crown side of the Queen's Bench Division¹; and to every Crown grant there is annexed by the common law an implied condition that it may be repealed by scire facias by the Crown².

Proceedings on a scire facias may be taken if the charter has been obtained by fraud or misrepresentation³; or if the Crown has granted a charter under a mistake as to facts, or under a misapprehension as to the construction or effect of the charter⁴; or if the Crown has exceeded its powers⁵; or if the corporation has done something which is prohibited or is not authorised by its charter⁶. A subject whose rights are affected by a franchise or charter granted to a corporation may, as of right, procure the cancellation or forfeiture of the charter by scire facias⁷; for the prerogative of the Crown is the privilege of, and may be used by, the subject on the fiat of the Attorney General⁸.

Where a charter of incorporation exists and there appears to be nothing on its face to indicate that it has been invalidly granted, it is presumed to be good until the contrary is proved⁹. So

long as the constitution of a corporation subsists, the court will treat it as an existing body, notwithstanding that it may be open to the Attorney General or the Crown to take proceedings for the purpose of setting the charter aside¹⁰.

1 See *Eastern Archipelago Co v R* (1853) 2 E & B 856 at 869, Ex Ch, per Martin B; *R v Boucher* (1842) 3 QB 641 at 657 per Denman CJ. The effect of the definition of 'civil proceedings' in the Crown Proceedings Act 1947 s 38(2) is that this form of scire facias is left untouched by the Act. As to scire facias see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 279; CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 391; CROWN PROCEEDINGS AND CROWN PRACTICE vol 12(1) (Reissue) PARA 107.

A body corporate de facto which took on itself to act as a body corporate but which from some defect in its constitution could not legally exercise the powers it affected to use formerly might have been dissolved by a judgment in quo warranto: see *R v Pasmore* (1789) 3 Term Rep 199 at 244 per Ashhurst J; *R v Amery* (1787) 1 Term Rep 575 at 584 per Ashhurst J. Informations in the nature of quo warranto have been abolished, and a right to sue for an injunction has been substituted in any case where any person acts in an office in which he is not entitled to act: see PARA 1173 ante. There is no power under this procedure to order the dissolution of a corporation.

A chartered company may be wound up by the court: see PARA 1302 post.

2 *Eastern Archipelago Co v R* (1853) 2 E & B 856 at 914, Ex Ch, per Jervis CJ.

3 *R v Boucher* (1842) 3 QB 641; *La Banque d'Hochelaga v Murray* (1890) 15 App Cas 414, PC.

4 Grant, Law of Corporations 20-21.

5 *Eastern Archipelago Co v R* (1853) 2 E & B 856, Ex Ch; and see PARAS 1132-1133 ante.

6 *Jenkin v Pharmaceutical Society of Great Britain* [1921] 1 Ch 392 at 398; cf *R v Pasmore* (1789) 3 Term Rep 199 at 244 per Ashhurst J.

7 *Eastern Archipelago Co v R* (1853) 2 E & B 856 at 886, Ex Ch, per Cresswell J.

8 *Eastern Archipelago Co v R* (1853) 2 E & B 856 at 914, Ex Ch, per Jervis CJ; and see *Portal v Emmens* (1876) 1 CPD 664, CA.

9 See Grant, Law of Corporations 40.

10 *Robinson v Governors of London Hospital* (1853) 10 Hare 19 at 24.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/5. DISSOLUTION OF CHARTERED CORPORATIONS/1302. Winding up of unregistered companies.

1302. Winding up of unregistered companies.

A chartered corporation¹ and certain other kinds of corporation (excluding corporations which are not trading corporations²) may be wound up by the court, under the Insolvency Act 1986³, as unregistered companies.

1 *Re English, Scottish and Australian Chartered Bank* [1893] 3 Ch 385, CA; *Re Oriental Bank Corpn* (1885) 54 LJ Ch 481, CA.

2 See *Re Bristol Athenaeum* (1889) 43 ChD 236; and COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARA 1150.

3 See under the Insolvency Act 1986 Pt V (ss 220-229) (as amended): see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARA 1147 et seq.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/5. DISSOLUTION OF CHARTERED CORPORATIONS/1303. Administration and voluntary arrangements.

1303. Administration and voluntary arrangements.

The statutory provisions relating to administration orders and company voluntary arrangements only apply to corporations that are companies¹ as defined in the Companies Act 1985² and certain companies formed or incorporated outside the United Kingdom³.

1 See the Insolvency Act 1986 ss 1(4), 8 (both as substituted), Sch B1 para 111(1A) (as added). As to administration orders see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 146 et seq. As to company voluntary arrangements see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(3) (2004 Reissue) PARA 71 et seq.

2 I.e. companies defined by the Companies Act 1985 s 735(1).

3 I.e. a company incorporated in an EEA state other than the United Kingdom, or a company not incorporated in an EEA state but having its centre of main interests in a member state other than Denmark: see the Insolvency Act 1986 s 1(4) (substituted by the Insolvency Act 1986 (Amendment) Regulations 2005, SI 2005/879, reg 2(1), (2)). The amendments which the Insolvency Act 1986 (Amendment) Regulations 2005, SI 2005/879, make to the Insolvency Act 1986 have the effect of reversing the decision in *Re Salvage Association* [2003] EWHC 1028, [2003] 3 All ER 246 (where it was held that an administration order could be made in respect of an association incorporated by royal charter). However, the amendments made by the regulations do not affect a voluntary arrangement under the Insolvency Act 1986 Pt I (ss 1-7B) (as amended), or the appointment of an administrator under Pt II (s 8) (as substituted) that took effect before 13 April 2005 (i.e. the date on which the regulations came into force: Insolvency Act 1986 (Amendment) Regulations 2005, SI 2005/879, reg 1(1)): reg 3.

UPDATE

1303 Administration and voluntary arrangements

NOTE 1--Insolvency Act 1986 Sch B1 para 111(1A) amended: SI 2009/1941.

NOTE 2--Companies Act 1985 s 735(1) replaced by Companies Act 2006 s 1(1): see COMPANIES vol 14 (2009) PARA 24.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/5. DISSOLUTION OF CHARTERED CORPORATIONS/1304. Effect of dissolution.

1304. Effect of dissolution.

Where a corporation has been dissolved, its members, in their natural capacities, may neither recover debts which were due to the corporation nor be charged with debts contracted by it¹; but personal privileges granted to individual members of a corporation will not necessarily be destroyed by the dissolution of the corporation or the surrender of its liberties².

An estate limited to a corporation in fee simple does not determine on the corporation's being dissolved and revert to the grantor³ but, in default of any other owner, passes to the Crown⁴. All franchises enjoyed by the corporation revert to the Crown⁵. Personal property, including leaseholds⁶, belonging to an extinct corporation vest as bona vacantia in the Crown⁷, including the equity of redemption in leaseholds which have been mortgaged by a dissolved corporation⁸.

In the case of companies wound up under the Insolvency Act 1986, all property and rights vested in or held on trust for the company immediately before its dissolution (including

leasehold property, but not including property held by the company on trust for any other person) are deemed to be bona vacantia and accordingly belong to and vest in the Crown⁹. This applies also to chartered corporations wound up under the Insolvency Act 1986¹⁰.

Where, by reason of the dissolution of a corporation, a legal estate in any property has determined, the court may by order create a corresponding estate and vest the same in the person who would have been entitled to the estate which determined had it remained a subsisting estate¹¹. A county court has jurisdiction to make an order in any case where the value of the property or of the interest in the property which is to be dealt with in the court does not exceed the county court limit¹².

The court may also make vesting orders in relation to land, stock, or choses or things in action, which were held by a dissolved corporation as trustee¹³. A county court has jurisdiction where the trust estate does not exceed the county court limit¹⁴.

It has been stated that, where a charter has been declared by Act of Parliament to be void, all acts done under it are void also, unless a contrary intention appears from the Act¹⁵.

1 *Naylor v Cornish* (1684) 1 Vern 311n (1); *Edmunds v Brown and Tillard* (1668) 1 Lev 237 (bond signed by individual members).

2 *Leight v Pym* (1686) 2 Lut 1329.

3 The view that the estate reverted to the grantor derived from a statement in Co Litt 13b, and was accepted by these later authorities: *A-G v Lord Gore* (1740) 9 Mod Rep 224 at 226; 1 Bl Com 472; *Hastings Corp v Letton* [1908] 1 KB 378 (cited in note 6 infra); *Re Woking UDC (Basingstoke Canal) Act 1911* [1914] 1 Ch 300, CA; and see *Re Nos 56 and 58 Albert Road, Norwood* [1916] 1 Ch 289.

4 *Re Wells, Swinburne-Hanham v Howard* [1933] Ch 29, CA; *Re Strathblaine Estates Ltd* [1948] Ch 228, [1948] 1 All ER 162.

5 *Colchester Corp v Brooke* (1846) 7 QB 339 at 386 per Lord Denman CJ.

6 In *Hastings Corp v Letton* [1908] 1 KB 378, the Divisional Court held that, in the case of leasehold property held by a corporation, the effect of dissolution is to terminate the lease by acceleration of the reversion in favour of the lessor and that the Crown would not be entitled to take as bona vacantia. This decision was severely criticised in *Re Wells, Swinburne-Hanham v Howard* [1933] Ch 29, CA, and, according to the reasoning of the Court of Appeal in that case, personal property of every kind belonging to an extinct corporation and whether or not held in trust for the corporation vests in the Crown as bona vacantia. As to bona vacantia see COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARA 933 et seq; CROWN PROPERTY vol 12(1) (Reissue) PARA 235 et seq.

7 *Re Higginson and Dean, ex p A-G* [1899] 1 QB 325; *Re Wells, Swinburne-Hanham v Howard* [1933] Ch 29, CA. See also 2 Kyd on Corporations 516; Grant, Law of Corporations 304.

8 *Re Wells, Swinburne-Hanham v Howard* [1933] Ch 29, CA.

9 See the Companies Act 1985 s 654; and COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARA 933.

10 See the Insolvency Act 1986 s 220(1) (as amended), s 221(1); para 1302 ante; and COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARAS 1146-1147. As to the power of the court to declare the dissolution of a company void, and as to the effect of such a declaration on the property of the company, see the Companies Act 1985 s 651 (as amended), s 655; and COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARAS 934, 937. As to the power of the Crown to disclaim property vesting as bona vacantia see ss 656, 657 (as amended); and COMPANY AND PARTNERSHIP INSOLVENCY vol 7(4) (2004 Reissue) PARA 935.

11 Law of Property Act 1925 s 181(1) (renumbered by the County Courts Act 1984 s 148(1), Sch 2 Pt II para 7). As to the application of the Law of Property Act 1925 to the Crown see s 208; and CROWN PROPERTY vol 12(1) (Reissue) PARA 209.

12 Ibid s 181(2) (added by the County Courts Act 1984 Sch 2 Pt II para 7). A county court now has jurisdiction under the Law of Property Act 1925 s 181 (as amended) if the capital value of the land or interest in land to be dealt with does not exceed £30,000: see the High Court and County Courts Jurisdiction Order 1991, SI 1991/724, art 2(3)(a). The Law of Property Act 1925 s 181 (as amended) extends to other forms of property

(see s 205(1)(xx)), but these are not covered by the High Court and County Courts Jurisdiction Order 1991, SI 1991/724.

13 See the Trustee Act 1925 ss 44(ii)(c), 51(1)(ii)(c); *Re C and H Crichton (1921) Ltd* [1932] WN 208; *Re Strathblaine Estates Ltd* [1948] Ch 228, [1948] 1 All ER 162; cf *Re Ruddington Land* [1909] 1 Ch 701; *Re Peek's Contract* (1920) 65 Sol Jo 220; and see CPR Sch 1 RSC Ord 93 r 4; and TRUSTS vol 48 (2007 Reissue) PARAS 875, 884.

14 See the Trustee Act 1925 s 63A(2) (as added); and TRUSTS vol 48 (2007 Reissue) PARA 642.

15 Grant, Law of Corporations 39.

UPDATE

1304 Effect of dissolution

NOTE 10--Insolvency Act 1986 s 221(1) amended: SI 2009/1941.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/6. LIVERY COMPANIES OF THE CITY OF LONDON/1305. Origin of the companies.

6. LIVERY COMPANIES OF THE CITY OF LONDON

1305. Origin of the companies.

The livery companies of London¹, constituting a survival of institutions once general throughout Europe, had their origin in the mediaeval fraternities and craft guilds of that City and may have been a natural development from the pre-conquest Knighten and Frith guilds². Fraternities were religious and social in character, while craft guilds were concerned with monopolising and regulating a trade or handicraft. Some early craft guilds were grafted on to even earlier fraternities³ and such dual nature became characteristic of all later guilds. The establishment and powers of guilds came to be regulated by the Crown and later by the local authority. Henry II, while recognising the Bakers and Weavers, fined 18 other guilds, including the Goldsmiths, in 1180 for organising without a licence⁴. By degrees the occupation of almost every merchant and craftsman came to be encompassed by the guild system and by the beginning of the fourteenth century the principle had become established that only through the freedom of a guild could the freedom of the City of London be obtained⁵. In England the guilds escaped the more general European abolition partly because their trading monopolies were used less oppressively and sometimes to the positive advantage of the public by ensuring supplies, and partly because such monopolies soon fell into desuetude, although the social, charitable and educational characteristics of the companies continued and expanded⁶.

1 Royal Commissions reported on the livery companies of the City of London in 1837 and 1884. The first was concerned with the charters, governing body, membership and finances (apart from trust funds) of 89 companies, of which it found that the Combmakers, Fishermen, Hatband Makers, Long Bowstring-makers, Pinmakers, Silkmen, Silkthrowers, Soapmakers, Starchmakers, Tobacco Pipe-makers and Woodmongers were extinct (Second Report of the Municipal Corporations Commission 1837 (HC Paper (1837) no 239) 286, 294, 298, 303, 314, 322, 338, 342). The second dealt at length with the same subjects and with the trust as well as the corporate property of the companies, and set out the charities, schools and other institutions founded, maintained or supported, together with the schemes of the Commissioners of Endowed Schools and the Charity Commissioners, and other instruments under which they were administered (Report of the City of London Livery Companies Commission 1884 (C 4073) pp 31-35).

The Report of the City of London Livery Companies Commission 1884 (C 4073) states (at p 24) that there were then 12 great City livery companies, namely:

- 7 (1) Mercers;
- 8 (2) Grocers;
- 9 (3) Drapers;
- 10 (4) Fishmongers;
- 11 (5) Goldsmiths;
- 12 (6) Skinners;
- 13 (7) Merchant Taylors;
- 14 (8) Haberdashers;
- 15 (9) Salters;
- 16 (10) Ironmongers;
- 17 (11) Vintners; and
- 18 (12) Clothworkers,

and these are still the great City livery companies, the order of precedence being as shown save that the Merchant Taylors and the Skinners take sixth place in alternate years. The Report lists (at pp 24, 27-28) 62 minor companies as follows (the figures in brackets indicating the order each company now takes in the list of precedence): the Society of Apothecaries (58), and the companies of Armourers (now Armourers and Brasiers) (22), Bakers (19), Barbers (now Barber-Surgeons) (17), Basketmakers (52), Blacksmiths (40), Bowyers (38), Brewers (14), Broderers (48), Butchers (24), Carmen (77), Carpenters (26), Clockmakers (61), Coachmakers (now Coachmakers and Coach Harness Makers) (72), Cooks (35), Coopers (36), Cordwainers (27), Curriers (29), Cutlers (18), Distillers (69), Dyers (13), Fan Makers (76), Farriers (55), Feltmakers (63), Fletchers (39), Founders (33), Framework Knitters (64), Fruiterers (45), Girdlers (23), Glass Sellers (71), Glaziers and Painters of Glass (53), Glovers (62), Gold and Silver Wyre Drawers (74), Gunmakers (73), Horners (54), Innholders (32), Joiners and Ceilers (41), Leathersellers (15), Loriners (57), Makers of Playing Cards (75), Masons (30), Musicians (50), Needlemakers (65), Painters (now Painter Stainers) (28), Patternmakers (70), Pewterers (16), Plaisterers (46), Plumbers (31), Poulterers (34), Saddlers (25), Scriveners (44), Shipwrights (59), Spectacle Makers (60), Stationers (now Stationers and Newspaper Makers) (47), Tallow Chandlers (21), Tin Plate Workers (67), Turners (51), Tylers and Bricklayers (37), Upholders (49), Wax-chandlers (20), Weavers (42), Wheelwrights (68), and Woolmen (43). The Gardeners (66) and Paviers (56) have since been resuscitated. With the latest additions to the livery companies, namely, the Actuaries (91), the Air Pilots and Air Navigators (81), the Arbitrators (93), the Builders Merchants (88), the Chartered Accountants (86), the Chartered Architects (98), the Chartered Secretaries and Administrators (87), the Chartered Surveyors (85), the Constructors (99), the Engineers (94), the Environmental Cleaners (97), the Farmers (80), the Firefighters (103), the Fuellers (95), the Furniture Makers (83), the Hackney Carriage Drivers (104), the Information Technologists (100), the Insurers (92), the International Bankers (106) the Launderers (89), the Lightmongers (96), the Management Consultants (105), the Marketors (90), the Master Mariners (78), the Scientific Instrument Makers (84), the City of London Solicitors (79), the Tobacco Pipe Makers and Tobacco Blenders (a revival of the defunct company of Tobacco Pipe-makers) (82), the Tax Advisers (107), the Water Conservators (101), and the World Traders (102), the total number is now 107.

There are three companies of the City which are not livery companies and are not subject to the authority of the Court of Aldermen, namely the Parish Clerks, the Watermen and Lightermen, and the Security Professionals.

2 Report of the City of London Livery Companies Commission 1884 (C 4073) pp 8, 19, 57; Unwin, *Gilds and Companies of London* (4th Edn) 15-17; 1 Gross, *Gild Merchant* 20, 78, 80, 113, 116, 117, 164, 186-188.

3 Eg Saddlers, Grocers, Drapers (*Times*, City of London Number, 1927 p 21).

4 Unwin, *Gilds and Companies of London* (4th Edn) 47 et seq; Norton, *City of London* (3rd Edn, 1869) 59, 104.

5 Thomas, *Calendar of Plea and Memoranda Rolls, 1364-81*, pp xxxvi, lii et seq; Unwin, *Gilds and Companies of London* (4th Edn) 70.

6 Report of the City of London Livery Companies Commission 1884 (C 4073) pp 15, 59; Unwin, *Gilds and Companies of London* (4th Edn) 2.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/6. LIVERY COMPANIES OF THE CITY OF LONDON/1306. Constitution.

1306. Constitution.

Generally, a guild began as a voluntary association and became a recognised City company by the acceptance of its members as freemen of the City of London, the enrolment of its apprentices by the City Chamberlain, and the approval of its rules and ordinances¹.

A company became a livery company by the adoption of a livery by all or some of its members, but after 1560 such a step could be taken only with the consent of the Court of Aldermen. Clauses in charters or ordinances purporting to create a livery were of no effect until accepted by the City. All grants of livery after 1712 have limited the number of liverymen to be admitted². A grant of livery is made in the form of letters patent under the mayoralty seal and, except in very special circumstances, is now granted only to a City company of at least five years' standing.

1 The Corporation of London, Origin, Constitution, Powers and Duties (1953) 46, 47.

2 The Corporation of London, Origin, Constitution, Powers and Duties (1953) 47. The Gardeners, incorporated with a livery in 1606, were not recognised as a City company until 1659 and were not allowed a livery by the City until 1891.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/6. LIVERY COMPANIES OF THE CITY OF LONDON/1307. Charters.

1307. Charters.

Livery companies are incorporated by royal charters and not under the Companies Acts¹, but incorporation, though usual, is not essential and may follow or precede recognition as a City company². The first charters of incorporation were granted by Edward III and Richard II and have been reissued, often with some amendments, by subsequent monarchs. Some ancient companies were not incorporated until modern times, for example the Basketmakers (in 1937) and the Carmen (in 1946). The Master Mariners were incorporated on 18 August 1930 and granted a livery on 8 March 1932.

The charters, besides establishing the constitution of the company and its governing body, confer powers in respect of its objects, including power to hold land³ and to make ordinances. Former charters contained wide powers to control the trade of the company and set the limits of its jurisdiction within so many miles of the City of London or sometimes extended the jurisdiction to the whole realm, as in the instance of the Framework Knitters. A statute of 1437⁴ required that all letters patent of guilds, fraternities and incorporated companies should be registered before justices of the peace of counties or chief governors of cities and towns and that no ordinances should be made without being approved and recorded by such justices or governors. A subsequent Act of 1503⁵ provided that no craft, guild or fraternity should make or execute any ordinances unless they are examined and approved by the Chancellor, Treasurer and Chief Justices of either bench or three of them or by the justices of assizes; any alterations in the provisions of a charter or in byelaws, ordinances, or statutes made under powers conferred by a charter are matters which are now dealt with by the Privy Council. A charter of 1505 confirmed to the Mayor and Commonalty of the City of London the oversight and government of all the misteries within the City; and the Court of Aldermen examines the terms

of new charters, and approves, amends or rejects all new ordinances made by the livery companies⁶.

1 The City of London Solicitors' Company, incorporated under the companies legislation in 1909, was wound up before becoming a livery company in 1944. As to creation by charter see PARA 1130 et seq ante.

2 Ordinances of the Shipwrights, as the Fraternity of St Simon and St Jude, were allowed in 1456. The company was granted a livery in 1782, but has no charter of incorporation, and it claims to be a corporation by prescriptive right; this claim was accepted in a royal warrant of 1920, authorising the company to use certain arms on its corporate seal.

3 As to the statutory restrictions, now repealed, on the holding of land by corporations see PARA 1247 ante.

4 15 Hen 6 c 6 (Restraint of unlawful orders) (1437) (repealed).

5 Ordinances of Corporations Act 1503 s 1 (repealed); and see PARA 1194 note 1 ante.

6 See the Charter of 23 July, 20 Hen 7. The Court of Aldermen was petitioned by the City of London Solicitors' Company on 15 November 1955 for permission to apply for a charter of incorporation and by the Tallow Chandlers' Company on 21 March 1961 for permission to apply for a supplemental charter.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/6. LIVERY COMPANIES OF THE CITY OF LONDON/1308. Ordinances.

1308. Ordinances.

The ordinances of the livery companies vary greatly in number and detail; and many companies purport to act under a set of rules many of which have long been obsolete and of which only a few are now operated¹. By their ordinances, sanctioned by charters and grants from the municipality, the companies formerly supervised their trade by regulating apprentices and journeymen and the employment of non-freemen and by searches for enforcing standards and prices. They also attempted to settle controversies and disputes among their members². It was also said that the rules of all the bodies were such as to inculcate respect for the law, commercial honesty, and a high standard of conduct, together with kindness and consideration for the brethren and sisters, and for the poor; and that they also breathed a spirit of very simple piety³.

Modern ordinances make detailed provisions for the election of members of the governing body and for controlling its powers and proceedings, for the admission of freemen and liverymen, the binding of apprentices and the appointment of officers, for the control of finances, and for the use of the common seal.

1 The Poulters, for example, are still governed by 44 ordinances made in 1692, some of which were considered by the Court of Aldermen to be contrary to the franchises and liberties of the City, but which offending ordinances were never amended, probably never acted on, and have since become obsolete: Jones, Poulters of London (1965) 24, 25.

2 Report of the City of London Livery Companies Commission 1884 (C 4073) pp 12-14, 59; Unwin, Gilds and Companies of London (4th Edn) 221; Jones, Poulters of London (1965) 47, 48, 239.

3 Report of the City of London Livery Companies Commission 1884 (C 4073) p 11.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/6. LIVERY COMPANIES OF THE CITY OF LONDON/1309. Membership.

1309. Membership.

A livery company has three grades of members: (1) freemen; (2) liverymen; and (3) assistants, who are members of the court or governing body. The Master Mariners also have a membership apart from freemen. Various fees are payable on election to each of these grades and a quarterage or annual fee is payable in most companies¹. In grants of livery the Court of Aldermen has often specified the fee, or the minimum fee, to be required of those elected to the livery and must approve any alteration of it.

Freedom of a company may be obtained by servitude, patrimony, redemption or honoris causa. Admission by servitude is obtained on satisfactory completion of an apprenticeship to a freeman of the company. Freedom by patrimony is obtained as of right by the child of a freeman born after the father's admission to the freedom of the company². Freedom may be obtained by purchase or redemption at the absolute discretion of the company. Some companies specifically limit admissions by redemption and fees are usually higher than in the case of patrimony and servitude. Freedom honoris causa is given to persons of distinction without the payment of any fee³.

The right of patrimony is limited by the Master Mariners' and Solicitors' Companies to those persons who have the required qualification of master mariner or solicitor, the companies being restricted entirely to the profession.

The members of the livery are freemen of the company and of the City who have been promoted to the higher grade and are entitled to wear the livery of the company, although a livery gown is now worn only by the Master and Wardens of most companies and used to clothe a new liveryman on his admission. The court of the company has the sole power of calling freemen to the livery, although the Court of Aldermen may have limited the number to be called. In most companies the attainment of the position of a liveryman is a condition precedent to his being eligible for membership of the Court of Assistants. In rare cases the liverymen constitute the governing body of the company⁴.

The Court of Assistants consisted originally of the first incorporators. Assistants are normally elected for life and vacancies filled by the court from members of the livery. The court consists of a master or prime warden, several other wardens, the junior of whom is the renter warden or bursar, and a number of assistants. In rare instances the court is elected by the livery⁵.

1 Report of the City of London Livery Companies Commission 1884 (C 4073) p 63.

2 Report of the City of London Livery Companies Commission 1884 (C 4073) pp 20-21.

3 Report of the City of London Livery Companies Commission 1884 (C 4073) p 21.

4 Report of the City of London Livery Companies Commission 1884 (C 4073) pp 21-22.

5 It is so elected in the case of the Butchers. The Farmers require that the majority of the court shall be engaged in the farming industry.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/6. LIVERY COMPANIES OF THE CITY OF LONDON/1310. Governance and administration.

1310. Governance and administration.

The court has the entire control of the livery company's affairs, the management of its corporate property, the administration of its trusts, the admissions to the freedom, livery and

court, the appointment of salaried officers and any other appointments within the patronage of the company¹.

Although the livery companies themselves are not charities², they do administer very large charitable funds, partly under schemes approved by the Charity Commissioners³ and partly of their own volition from their corporate income⁴. One of the characteristics of the livery companies is the encouragement given to education at all levels. The poorest company makes provision for necessitous freemen and liverymen and their widows and orphans⁵, and most are able to contribute to some City and national charities. All companies hold banquets and dinners; some were founded by bequests for the purpose, others, particularly in the minor companies, are financed by contributions from the members attending⁶.

1 Report of the City of London Livery Companies Commission 1884 (C 4073) p 22. As to the court see PARA 1309 ante.

2 *Re Meech's Will, Butchers' Co v Rutland* [1910] 1 Ch 426; *Honourable Company of Master Mariners v IRC* (1932) 17 TC 298; and see CHARITIES vol 8 (2010) PARAS 60, 62.

3 Report of the City of London Livery Companies Commission 1884 (C 4073) pp 30-36.

4 Report of the City of London Livery Companies Commission 1884 (C 4073) pp 37-39, 66-69.

5 Report of the City of London Livery Companies Commission 1884 (C 4073) pp 22, 63.

6 Report of the City of London Livery Companies Commission 1884 (C 4073) pp 37 (note 2), 63.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/6. LIVERY COMPANIES OF THE CITY OF LONDON/1311. Special rights of particular companies.

1311. Special rights of particular companies.

The Fishmongers' Company discharges the duty of preventing offences against the statutory provisions relating to the sale of shellfish, of undersized fish, or of fish during close time¹. In reliance on its charters, it appoints and pays 'fish meters', who examine fish offered for sale in the City of London and condemn any which are unsound².

The Goldsmiths' Company is by statute empowered to assay and mark gold and silver wares, and to prosecute persons who, in any part of England or Wales, commit certain offences in relation to gold and silver wares etc³.

The Vintners' Company⁴ and the Dyers' Company are, by ancient custom, associated with the Crown as joint protectors of the Thames swans⁵, in that each company has a royalty permitting it to own a game of swans⁶ on that river.

The Society of Apothecaries is one of the bodies entitled to grant qualifications to persons passing the examinations for medical practitioners⁷.

The Scriveners' Company examines, admits and regulates Scrivener Notaries⁸.

Until recently, the Stationers and Newspaper Makers' (formerly the Stationers') Company maintained a register of a voluntary nature⁹ in which books and fine arts might be registered on payment of a fee. The entries were made for the purpose of record and for assisting in the proof of the existence of a work on a given date in case of infringement; the words 'registered at the Stationers' Hall' being added to any registered work¹⁰.

The Gunmakers' Company maintains a public proof house and proves and stamps gun-barrels¹¹.

The Spectacle Makers' Company was formerly one of the major examining bodies for ophthalmic and dispensing opticians whose qualifications were recognised for registration by the General Optical Council¹².

The Farriers' Company is the examining body for farriery¹³.

1 See the Sea Fish (Conservation) Act 1967 s 16 (as amended); and AGRICULTURE AND FISHERIES vol 1(2) (2007 Reissue) PARA 1011.

2 Report of the City of London Livery Companies Commission 1884 (C 4073) p 19.

3 The Goldsmiths' Company (which has the formal title of 'the Wardens and Commonalty of the Mystery of Goldsmiths of the City of London') is one of the assay offices for the purposes of the Hallmarking Act 1973: see s 22(1); and TRADE MARKS AND TRADE NAMES vol 48 (2007 Reissue) PARA 465. Its duties include: striking with approved hallmarks articles of gold, silver, platinum or other metal to which the Hallmarking Act 1973 may be applied (see s 17), which may be submitted to it for hallmarking (see s 4 (as amended), s 22(1), Sch 2 (as amended)); and giving consent to alterations to hallmarked articles (see s 5). It has certain powers to break and deface articles submitted which contain unauthorised materials (see s 15, Sch 5 para 2(2), (4)) and to cancel or obliterate unauthorised mark s (see s 7). As to the charges which may be made for assaying and hallmarking etc see s 12. The Goldsmiths' Company is one of the authorities empowered to enforce the provisions of the Hallmarking Act 1973: see s 9(2). It must appoint two members to the British Hallmarking Council: see s 13, Sch 4 para 3. See further SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) PARA 806; TRADE MARKS AND TRADE NAMES vol 48 (2007 Reissue) PARA 483.

4 The Wine Standards Board is managed jointly by the Vintners' Company and the Department of the Environment, Food and Rural Affairs and is responsible for ensuring that the European Union wine regulations are implemented.

5 Report of the City of London Livery Companies Commission 1884 (C 4073) p 19.

6 le a flock of swans kept for pleasure.

7 The qualification of licentiate in medicine and surgery of the Society of Apothecaries is a primary qualification for the purpose of registration as a medical practitioner: see the Medical Act 1983 s 4(2)(d), (3)(d); and MEDICAL PROFESSIONS vol 30(1) (Reissue) PARA 94.

8 A public notary may practise as a notary in, or within three miles of, the City of London whether or not he is a member of the Incorporated Company of Scriveners of London (even if he is admitted to practise only outside that area): Access to Justice Act 1999 s 53. As to notaries generally see LEGAL PROFESSIONS vol 66 (2009) PARA 1412 et seq.

9 A register of books and other publications was maintained under the provisions of the Copyright Act 1842 ss 11, 24. That Act was repealed by the Copyright Act 1911 s 36, Sch 2, but the repeal did not apply to the self-governing colonies until the Copyright Act 1911 had been adopted or similar legislation enacted by them; the register remained open, therefore, until the end of 1923 when Canada, the last of the countries to do so, introduced appropriate legislation. The voluntary register maintained by the Stationers' and Newspaper Makers Company was not a continuation of the former one.

10 The register was closed to new registrations in February 2000.

11 See the Gun Barrel Proof Act 1868; and the Gun Barrel Proof Act 1950. Similar functions are performed by the Guardians of the Birmingham Proof House. See further TRADE MARKS AND TRADE NAMES vol 48 (2007 Reissue) PARA 487.

12 As to the register maintained by the General Optical Council see the Opticians Act 1989 s 7 (as amended); and MEDICAL PROFESSIONS vol 30(1) (Reissue) PARA 838. As to the qualifications required for registration, etc see ss 8, 9 (both as amended); and MEDICAL PROFESSIONS vol 30(1) (Reissue) PARAS 840-841. The General Optical Council continues to recognise the following qualifications which were awarded by the Spectacle Makers' Company: Fellowship in Ophthalmic Optics (FSMC); Higher Diploma in Ophthalmic Optics (SMHD); Diploma in Dispensing Optics (SMC (Disp)); Supplementary Contact Lenses Certificate (CL Cert); and Senior Award (SMSA). The Spectacle Makers' Company no longer awards these qualifications.

13 It holds fellowship and associateship examinations and for the diploma in farriery, which is the minimum standard for recognition under the Farriers (Registration) Act 1975: see ANIMALS vol 2 (2008) PARA 863.

UPDATE

1311 Special rights of particular companies

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/6. LIVERY COMPANIES OF THE CITY OF LONDON/1312. Municipal rights.

1312. Municipal rights.

The freemen of the livery companies have an inchoate right to the freedom of the City, the possession of which is essential to being entitled to the benefit of the customs of the City of London, and is a condition precedent to an election to the livery¹.

The Corporation of the City of London is brought into connection with the livery companies by reason of the existence of a body known as the Liverymen of the City of London in Common Hall Assembled, which consists of those liverymen of the companies who have a 12-months' seniority. This body proposes to the Court of Aldermen two aldermen, one of whom the court elects lord mayor, and itself elects the sheriffs, chamberlain, bridgemasters and the auditors of the City and Bridge House Estate accounts².

1 Report of the City of London Livery Companies Commission 1884 (C 4073) p 23. A discretion exists with the Court of Aldermen and the Chamberlain as to admitting persons presented by the livery companies, although, in general, all persons fulfilling the requirements of the law and custom of the City of London are as a matter of fact admitted (see Pulling, Laws, Customs etc of London (1842), 59-70, 81-87; Second Report of the Municipal Corporations Commission 1837 (HC Paper (1837) no 239)).

2 Report of the City of London Livery Companies Commission 1884 (C 4073) p 23; Corporation of London, Origin, Constitution, Powers and Duties (1953) 9-15; and see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 40 et seq.

Halsbury's Laws of England/CORPORATIONS (VOLUME 9(2) (2006 REISSUE))/6. LIVERY COMPANIES OF THE CITY OF LONDON/1313. Creation of new livery companies.

1313. Creation of new livery companies.

New livery companies may be created at any time. Either a body of non-freemen exercising a particular trade until then imperfectly represented among the livery companies, or a body of freemen of different companies exercising a new trade or a particular branch of an old trade, who have formed an association or guild, may seek recognition as a City company for bringing in their regulations and stating their objects to the Court of Aldermen¹. Except in very special circumstances, such an association or guild should be of at least ten years' standing.

If accepted and recognised, the new company will have the right of admitting freemen and presenting them to the City Chamberlain for the freedom of the City when they will be enrolled as 'citizen and [name of the company]'. The company will be able to bind apprentices to its

freemen in accordance with the custom of London and admit time-expired apprentices to its freedom².

Any company seeking a grant of livery should, except in very special circumstances, be a City company of at least five years' standing. After grant of a livery, the company may admit freemen to the livery of the company and, after a year, they will be qualified to vote in Common Hall³.

1 Eg the Builders Merchants were recognised as a City company without a grant of livery on 21 November 1972.

2 Corporation of London, *Origins, Constitution, Powers and Duties* (1953) 90.

3 See 11 Geo 1 c 18 (City of London Elections) (1724) s 14; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 40. As to the Liverymen of the City of London in Common Hall Assembled see PARA 1312 ante.